

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

401 9TH STREET, N.W. - SUITE 1000
WASHINGTON, D.C. 20004-2134
www.troutmansanders.com
TELEPHONE 202-274-2950

Sandra L. Brown
sandra.brown@troutmansanders.com

Direct Dial, 202-274-2959
Fax 202-654-5603

August 29, 2008

Via Hand Delivery

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

223473

**RE: STB Finance Docket No. 35160 Oregon International Port of Coos Bay—
Feeder Line Application—Coos Bay Line of the Central Oregon & Pacific
Railroad, Inc.**

Dear Secretary Quinlan:

Enclosed for filing in the above captioned proceeding please find the original and ten (10) copies of the Motion to Compel Discovery from the Central Oregon & Pacific Railroad, Inc. filed by the Oregon International Port of Coos Bay.

One extra copy of the Motion is enclosed for date-stamp and return to our offices by the waiting messenger.

Please feel free to contact me if you have any questions.

Very truly yours,


Sandra L. Brown

Enclosure

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Office of Proceedings
AUG 29 2008
Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35160

**OREGON INTERNATIONAL PORT OF COOS BAY
—FEEDER LINE APPLICATION—
COOS BAY LINE
OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

**MOTION TO COMPEL DISCOVERY
FROM THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

Sandra L. Brown
Michael H. Higgins
David E. Benz
TROUTMAN SANDERS LLP
401 Ninth Street, NW
Washington, DC 20004-2134
(202) 274-2959 Phone
(202) 654-5603 Fax
sandra.brown@troutmansanders.com
michael.higgins@troutmansanders.com
david.benz@troutmansanders.com

*Counsel for the Oregon International
Port of Coos Bay*

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35160

**OREGON INTERNATIONAL PORT OF COOS BAY
—FEEDER LINE APPLICATION—
COOS BAY LINE
OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

**MOTION TO COMPEL DISCOVERY
FROM THE CENTRAL OREGON & PACIFIC RAILROAD, INC.**

Pursuant to 49 CFR § 1114.31, the Oregon International Port of Coos Bay (the “Port”) respectfully requests the Surface Transportation Board (the “Board” or “STB”) to issue an order compelling the Central Oregon & Pacific Railroad, Inc. (“CORP”) to fully provide the discovery requested¹ and for other relief as noted herein. CORP must be required to allow the Port to enter the land for a complete inspection consistent with 49 CFR § 1114.30 so that the Port can wholly participate and respond to the issues raised within the proceedings related to CORP’s embargo, abandonment and the Port’s proposed efforts to restore service on this Line which is vital to the southwestern coast of Oregon.

¹ This motion is timely under the Board’s August 8 Decision in this proceeding since CORP’s refusal to grant this right of entry was received today. See Exhibit 12. In the interest of time the Port is not responding to CORP’s letter but the Port does note that there are numerous inaccurate and false statements in CORP’s August 28 letter (received August 29).

PROCEDURAL HISTORY AND SUMMARY

The Port filed its Feeder Line Application regarding the Coos Bay Subdivision of CORP ("Line") on July 11, 2008. On the same day, the Port also served discovery requests on CORP, which included a request for the right to enter upon the Line for all lawful purposes, including inspection, survey, measuring, testing, photography, and sampling consistent with 49 CFR 1114.30.² CORP responded to this request on July 28, 2008, agreeing to allow the requested entry subject to certain standard conditions but with no mention of the additional limitations CORP would later impose. See Exhibit 3 at page 35. The Port immediately followed up with a letter to CORP on August 1 outlining a plan to begin the inspection. See Exhibit 4. In the August 1 letter, the Port stated that the inspection may need to be done in parts because of the proliferation of bridges and tunnels on the Line and the limited accessibility to the Line. CORP provided a Release and Waiver agreement that would govern the Port's inspection of the Line on August 4, 2008. See Exhibit 5. Initially and without any discussion with the Port's counsel and without including such objections in their discovery response, CORP included language in the agreement that stated that the Port could only make a one-time inspection visit,

² The Port has been requesting permission to inspect the Line for more than five months. The first request was made verbally by the Port's consultant Gene Davis on March 19 to CORP General Manager Kevin Spradlin. Mr. Spradlin denied Mr. Davis' request on March 20. See Exhibit 1. The second request was made via a letter from the Port to Paul Lundberg on March 20, 2008. See Exhibit 2. No response was received from Mr. Lundberg. CORP/RailAmerica's denial and unresponsive actions regarding the inspection have been consistent with their actions in general regarding the Coos Bay Line for more than a year now and that attitude has been the biggest impediment to finding a win-win solution to date and in fact if CORP/RailAmerica would have honestly come to the table last summer and fall, this Line would already be re-opened and providing service to the southwestern region of Oregon. Juxtaposed to the attitude of RailAmerica's management, the Port could not agree more that CORP's employees were "helpful" and "cooperative" and the Port believes that this situation was caused by RailAmerica and Fortress management and not CORP employees.

lasting no more than three days, and that the tunnels would be off limits during the inspection. *Id.* The Port strongly objected to this limitation and sent a mark-up of the agreement back to CORP on August 6 which included removing the various inspection limitations that had not been raised in CORP's discovery response and are not consistent with 49 CFR 1114.30. See Exhibit 6.

On August 8, CORP finally provided the dates for the initial inspection which would be held on August 13-15. See Exhibit 7. CORP's counsel noted the impassable nature of the line from end-to-end because of downed trees and that the tunnels have been fenced over. The Port's counsel continued to object to CORP's limitations and discussed these verbally with CORP's counsel on August 11 noting that the Line is over 111 miles long and has a proliferation of tunnels and bridges and the tunnels were a main issue in these proceedings. In addition, counsel discussed that the current condition of the Line meant that a simple hy-rail trip on the Line would be complicated and lengthy because of the required back-tracking. Furthermore, because CORP would not permit the Port's experts to enter the tunnels on the Line this meant that even more back-tracking would be needed. CORP's counsel agreed to drop the limitations from the agreement regarding a single visit and a three-day maximum from the agreement (there never was a limitation in the CORP agreement limiting the Port's inspection of tunnels or bridge and in fact the agreement provides that the Port expressly waives and assumes the risks associated with the inspection because of the condition of tunnels and bridges, see Section 3 of Exhibit 5 and 8).

Based upon this discussion, the Port's counsel sent back the revised agreement on August 11. Exhibit 8. CORP's counsel provided an okay to the agreement on August 11.

Exhibit 9. On August 12, the Port and its representatives signed the liability, waiver, and indemnity agreement and provided the required insurance certificates for the initial inspection. See Exhibit 10. In the interest of time and to begin the process of gaining actual on-the-ground knowledge of the current condition of the Line, the Port and its track expert undertook its first³ on-site visit on August 13-15, 2008 which were the first days offered by CORP. Scheduling and time constraints did not permit the Port to get bridge and tunnel experts on the ground for that timeframe (and CORP was still verbally forbidding entry into the tunnels). Thus, this first visit focused on the part of the Line's net liquidated value ("NLV") relating to the steel and track assets of the Line that were accessible via hy-rail and/or walking the Line.

In particular, Port expert Gene A. Davis, accompanied by the Port's Jeffrey Bishop and Martin Callery, evaluated the quantity and quality of the Line's rail and steel assets in order to refine Mr. Davis' initial assessment that had been based only on publicly accessible inspection and expensive helicopter flight. He also assessed the weight of rail, the wear and age of the rail and steel assets, the condition of the ties, and other factors related to the Verified Statement he provided in the Port's Feeder Line Application.

The Port felt and still believes that additional days for a site visit, focused on the Line's tunnels and bridges, are necessary. The condition of tunnels 13, 15, and 18 on the

³ Contrary to CORP's assertion that the Port has inspected the Line twice and that this third request is unwarranted, see Exhibit 12, CORP has only provided limited access one-time to the Port for inspection which would never be enough to inspect 111 mile of track and all the bridges and tunnels on the Line. In fact, there are over 58 steel and wooden bridges that exceed 100 feet and there are 9 tunnels. The Port's expert learned on the site visit, that there are a plethora of water crossings that are not even shown on CORP's track charts and CORP's employees were not aware of the location of many culverts on the Line that were not shown on the track charts.

Line initially caused the embargo, and the initial inspection on August 13-15 did not include those three tunnels.⁴ At the Public Hearing held in this case in Eugene, Oregon on August 21, 2008, the Board made clear that it was concerned that any future owner of any rail line must know the full condition of the rail line before purchase.

On August 22, the Port renewed its request in writing to CORP for a second visit to focus on the bridges and tunnels. Exhibit 11. Given the rapidly approaching deadline of September 12 for the Port's rebuttal in the feeder line proceeding (which has been shortened by approximately five weeks under the Board's compressed procedural schedule), the Port informed CORP that this inspection must occur as soon as possible and asked that the inspection start no later than August 27. *Id.* After hearing no response from CORP in five days, the Port's counsel telephoned CORP's counsel on August 27 to schedule this additional inspection. CORP's counsel stated that he did not think that CORP would allow a second inspection. Port's counsel discussed with CORP's counsel that the Port would be forced to file a Motion to Compel the inspection and implored CORP to permit three to five more days for the inspection so as to not involve the Board. CORP's counsel stated he believed the Board would never order the inspection and that CORP would provide a written refusal at some point. Notwithstanding that the conversation took place on August 27 and that CORP's letter states the date of August 28, CORP did not in fact respond in writing to the Port's August 22 renewed request until August 29. See Exhibit 12.⁵ Therefore, the Port is now forced to seek Board action to

⁴ While the CORP employees taking the Port's expert on the hy-rail site visit did unlock the gates and travel through some of the tunnels on the Line, our expert did not have time or the ability on that visit to complete an actual inspection of the tunnels or the bridges.

⁵ CORP would probably assert that its delay in responding was because CORP was

compel CORP to permit the Port's experts to further inspect the line in a manner consistent with 49 CFR 1114.30 and consistent with the right of entry agreement negotiated by the parties.

DISCUSSION

Without repeating the full history above, on July 11, 2008, the Port served the following discovery request for the right to enter upon and inspect land upon CORP:

1. Please grant a right of access to the Port and its counsel or consultants retained in connection with this proceeding to enter upon the Line and related CORP property for all lawful purposes related to this proceeding in STB Finance Docket No. 35160, including inspection, survey, measuring, testing, photographing and sampling. The Port will work with CORP to determine an appropriate time and manner for this inspection.

CORP responded on July 28 with the following response:

Subject to and without waiving its objections, CORP will permit the Port to inspect the Line subject to the following provisions: (1) that the agents of the Port performing said inspection be accompanied by an agent or agents of CORP at all times while on CORP property; (2) that the Port execute an appropriate liability waiver and indemnity agreement for potential liability for any accidents or incidents that may occur while the Port's representatives are on the Line or related CORP property; (3) that the Port provide evidence that it is insured for all activities on the Line during the inspection; (4) that the inspection does not damage the Line or the

working on its Reply to the Feeder Application due today. However, the Port notes that the Port's Comments on the CORP abandonment were due yesterday and the Port still managed to timely respond to CORP's second set of discovery served on August 21st which necessitated a response during this same time.

rail assets on the Line; and (5) that the time and manner of inspection be reasonable and agreed-to by the parties in advance.

See Exhibit 3.

CORP has subsequently placed limitations on this right of entry that are not consistent with the Board's regulations nor the spirit or intent of discovery. The Port unfortunately is now faced expending time, money and resources to draft and file this motion seeking an order from the Board to compel CORP to comply with discovery. This access is imperative for the issues raised in these proceedings and further addressed in the August 22nd Hearing.

The Board's rules of evidence and discovery are plainly set out in 49 C.F.R. part 1114. Discovery is authorized in this proceeding pursuant to 49 C.F.R. § 1114.21(a).⁶ The Board's 1997 modification to 49 C.F.R. § 1114.21 of its Rules of Practice resulted in a regulation that provides in pertinent part:

- (a) When discovery is available.
 - (1) Parties may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding . . .
 - (2) It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

These modifications eliminated "the requirement that Board approval be sought for discovery procedures other than written interrogatories and requests for admission."

⁶ These modifications were adopted by the Board in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527 (STB served Oct. 1 and Nov. 15, 1996) (*Expedited Procedures*), *aff'd sub nom. United Transp. Union-Ill. Legis. Bd. v. STB*, No. 97-1027 (D.C. Cir. Jan. 6, 1998).

FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company, STB Docket No. 42022, at 3 (STB served Feb. 5, 1998). In that decision, the Board noted that the overall goal of the modifications was to expedite the discovery process, acknowledging that the prior discovery rules “had the potential to impede expeditious discovery and [] generated too much paperwork.” *Id.* at n.8.

Of course, the scope of discovery authorized by the Board’s Rules of Practice is modeled on the scope of discovery under the Federal Rules of Civil Procedure.⁷ The Federal Rules of Civil Procedure “allow broad scope to discovery and this has been well recognized by the courts.” Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d, § 2007 (1994) (citations omitted). The federal rule, which applies to all forms of discovery, encompasses the broad standard against which the Port’s discovery request must be evaluated.

Furthermore, the Board’s discovery rules specifically provide for the right of entry upon land for inspection and other purposes. 49 C.F.R. § 1114.30 provides in pertinent part:

(a) *Scope.* Any party may serve on any other party a request:

- (2) To permit, subject to appropriate liability releases and safety and operating considerations, entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspecting and measuring, surveying,

⁷ The Federal Rules of Civil Procedure, in language virtually identical to the Board’s Rules of Practice, provide that:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . . The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
Fed. R. Civ. P. 26(b)(1).

photographing, testing, or sampling the property or any designated object or operation thereon.

CORP's objections to this necessary inspection do not fit within the bounds of the Board's or federal discovery rules and CORP's objections now are not consistent with CORP's written discovery responses and not consistent with agreement terms reached by the parties. CORP's objections now seem to be that the completion of the full inspection is "unduly burdensome" and "completely unwarranted" which CORP seems to describe later as irrelevant. See Exhibit 12.

CORP's unduly burdensome argument must fail. The standard for discovery is not merely that it creates a burden on the litigant. All discovery entails some burden. The courts and the Board carefully scrutinize objections made for burdensomeness. Even if compliance with discovery will cause great labor and expense to the party from which discovery is sought that does not of itself require denial of discovery. Rule 26(c) speaks of "undue burden or expense" and discovery should be allowed unless the hardship is unreasonable in the light of the benefits to be secured from the discovery. 8 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2214 at 647-48 (1970); *see also Snowden by and Through Victor v. Connaught Lab.*, 137 F.R.D. at 332-33. Even though the opposing party may be burdened, the balance favors the right to discovery when the information is particularly relevant. *Rich v. Martin Marietta Corporation*, 522 F. 2d 333, 343 (10th Cir. 1975). In this case, it is important to remember that CORP's actions with respect to the condition of the Line and especially the tunnels, is the whole reason three Board proceedings are active including this proceeding and AB 515 Sub No. 2 and Finance Docket No. 35130. Moreover, the Port fails to see how an additional three to five days of inspection of a largely non-operating Line, owned by a large short line

holding company, can be unduly burdensome.

Likewise, CORP's attempt now to argue that the inspection of the bridges and tunnels on this Line is not relevant to the net liquidated value and thus not permissible is absurd. The relevancy of discovery has been broadly construed to encompass any matter that might lead to the discovery of admissible evidence even though it may not be admissible as evidence. *Hickman v. Taylor*, 329 U.S. 495, 91 L.Ed. 451 (1947). Besides the fact that CORP seems to ignore that the condition of the Line is the key issue in these proceedings, CORP also fails to acknowledge that discovery can also pave the way for settlement in every type of litigation. In fact, discovery and settlement discussions often occur simultaneously. *See e.g. EEOC v. Hiram Walker & Sons*, 768 F.2d 884, 886 (1985). Furthermore, in class action suits, a settlement will only be accepted by the Court after discovery since "extensive discovery is an important indicia of the propriety of settlement negotiations." *Weinberger v. Kendrick*, 698 F.2d 61 at 74 (1982), *see also In re Continental Inv. Corp.*, 637 F.2d 8 (1980), *Duhaime v. John Hancock Mut. Life Ins. Co.*, 177 F.R.D. 54 (1997). Most importantly, CORP ignores the directive that the Board raised at the hearing held in Eugene on August 21, 2008 ("Hearing"). At that hearing, Chairman Nottingham specifically asked of the Port:

We get to another transfer hypothetically and the Port is the owner what steps would you take to make sure the record is clear as to what condition your starting off with and kind of the job that you have before you so we don't see this sort of repeat ... on whether or not the Port did an adequate job of maintaining it.

Draft Hearing Transcript at 139. The Port fails to see how the current condition of the Line could be any less relevant to these proceedings.

The embargo of the Line was caused by allegedly unsafe conditions in tunnels 13, 15, and 18. CORP has not let the Port into these three key tunnels and has not provided sufficient time for the Port to inspect tunnels and bridges on the Line, yet CORP now alleges that no inspection of these tunnels or bridges is necessary before a feeder line sale. Of course, the Port cannot prudently move forward with an acquisition of the Line without first inspecting and analyzing the condition of the central infrastructure elements that began this entire case. Based on this reason alone, the Board should grant this Motion.

Additionally, the conditions of the tunnels and bridges on the Line have a direct bearing on the NLV of the Line. Any tunnel problems could easily complicate salvage efforts, possibly require re-routing salvage equipment around tunnels, and maybe even require forgoing the steel assets inside the tunnels and thereby impact the NLV.

Beyond the issue of the salvaging of the Line, the condition of the tunnels and bridges is directly relevant to the Port's decision about whether or not to purchase the Line. Obviously, the Port is not purchasing the Line to sell the assets; instead, the Port needs to know the utility of all aspects of the Line infrastructure. Regardless of the impact on salvage value of a bridge or tunnel, the Port needs to know the functional "utility" of the tunnels and bridges. *Kansas City Southern Railway Company – Abandonment Exemption – Line in Warren County, MS*, Docket AB-103 (Sub-No. 21X), slip op. at 4 (served May 20, 2008) (Board notes that bridge with no effect on NLV of a rail line still had relevance due to its utility in allowing rail service to resume). The Port needs to know the answers to such questions as – what is the current condition of the tunnels and bridges? What rehabilitation is needed to resume rail service? What long-

term maintenance and repair needs are likely? The Board has previously agreed that the purchaser of a rail line under the feeder line regulations or the OFA process should be able to adequately inspect it. *Trinidad Railway, Inc. – Abandonment Exemption – in Las Animas County, CO*, Docket AB-573X (served Sept. 11, 2001); *Pyco Industries, Inc. – Feeder Line Application – Lines of South Plains Switching, Ltd. Co.*, Docket 34890 (served July 13, 2006). Making only three days available to inspect 111 miles of track, nine tunnels and 58 steel and wooden bridges that exceed 100 feet (not counting all the other bridges and culverts on the Line) is not reasonable and does not provide time to adequately inspect the Line. Moreover, such need greatly outweighs any burden that the additional inspection days might have on CORP.

In order to provide CORP the opportunity to respond to this Motion⁸ and provide the Board time to rule and then to factor in time for CORP and the Port to sort out any additional liability waivers and insurance certificates that will be needed for the additional inspectors, and to provide a fixed day in the future for the parties to plan for the inspection and arrange for the appropriate people and hy-rail equipment to be on site, the Port suggests that the Board order the bridge and tunnel inspection to start on September 11 and continue on sequential business days until completed. The Port believes that this inspection should take no longer than three to five business days⁹ as the Port has available up to eight additional tunnel, bridge and track inspectors that are

⁸ Under the discovery procedures implemented in this proceeding, CORP has two days to reply which CORP might interpret as September 3rd being the due date because of the Monday holiday.

⁹ The Port is willing to agree to limit its right of entry for this inspection to no more than five business days in order that CORP can appropriately plan for the time needed of its equipment and employee(s) which CORP requires to be present at the inspection.

already familiar with this Line¹⁰ and the Port worked out a plan for these inspectors to efficiently complete the inspection needed on this Line.

In light of the delay that CORP has caused by refusing this proper inspection, the Port is faced with also requesting that the Board modify the procedural schedule in this proceeding to permit the Port to supplement the record after September 12. The Port will still file its rebuttal on September 12 addressing all issues except the current condition of the tunnels and bridges or anything else that arises from the inspection. Based upon the date of inspection proposed above and in consultation with the bridge and tunnel experts, the Port believes that it would be able to receive the experts' reports and supplement the record on October 10, 2008.

The Port recognizes and appreciates the Board's desire to speed up the decisions that will impact the future of this Line. The procedural schedule governing the feeder line application was adopted by the Board in a decision served August 1, 2008. In that decision, the Board noted that the procedural schedule was "compressed" compared to the schedule found in the Board's regulations. Given the delay caused by CORP's refusal to allow the Port to adequately evaluate the Line, the Port should be permitted to supplement the record. Even with the Port's proposed modification, the procedural schedule will still be compressed compared to the procedural schedule in the Board's regulations – which would have required the Port to file its reply evidence by October 20. 49 CFR § 1151.2(f).

¹⁰ These inspectors have available to them prior data on the Line and any discovery materials on the condition of the Line (especially bridges and tunnels) that CORP produced in response to other Port discovery requests. However, the written material is not sufficient to make an accurate assessment of the current condition of the Line or cost to re-open the Line.

Ample justification exists for the Board to grant the Motion and modify the procedural schedule. The condition of the bridges and tunnels, including tunnels 13, 15, and 18, is clearly “relevant to the subject matter involved” in this proceeding. 49 CFR § 1114.21(a)(1). Board regulations specifically state that a party may seek to enter upon land or other designated property as part of discovery. 49 CFR § 1114.30(a)(2). It would be irresponsible and short-sighted for the Port to agree to purchase the Line without fully assessing the current condition and rehabilitation needs of the tunnels, bridges, and other critical aspects of the Line. *Railroad Ventures, Inc. v. Surface Transportation Board*, 299 F.3d 523, 552-553 (6th Cir. 2002) (court notes it is important for an OFA applicant to assess the subject rail line and its economic vitality).

As the Board knows, the Line is currently not operational; the Port’s decision on whether or not to purchase the Line directly depends upon the financial commitment necessary to return the Line to operation and maintain the Line at a sustainable level for the long-term. Lastly, the fact that CORP may dispute the Port’s need for a thorough inspection of the tunnels and bridges, and question the relevance of such an inspection to the Port’s Feeder Line Application, is no reason to reject the Motion to Compel. *Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad Company and Missouri & Northern Arkansas Railroad Company, Inc.*, Docket 42104, slip op. at 5 (served May 19, 2008) (“*Entergy v. UP*”) (Board notes that “Entergy’s discovery request will not be denied merely because UP may question Entergy’s legal theories of its case”).

When a party’s unwillingness to cooperate in discovery necessitates the filing of a motion to compel, which the Board then grants, there exists good cause to modify an existing procedural schedule. *Pyco Industries, Inc. – Feeder Line Application – Lines of*

South Plains Switching, Ltd. Co., Docket 34890, slip op. at 2 (served Oct. 5, 2006) (Board grants motion to compel and finds that requiring a response “to the discovery will necessitate some changes in the procedural schedule”). The modification sought by the Port will allow the Port to fully address all pertinent issues in its rebuttal evidence so that the Board may have a complete record on which to decide. *Cf. Duke Energy Corporation v. Norfolk Southern Railway Company*, Docket 42069, slip op. at 12 (served July 26, 2002) (after partially granting motion to compel, Board states that “a short extension of the procedural schedule appears necessary to allow sufficient time” for the movant to “receive and review documents covered by this decision and prepare their reply statements”). *See also Entergy v. UP*, Docket 42104, slip op. at 1-2 and 6 (served May 19, 2008) (Board extends procedural schedule by over a month after partially granting motion to compel).

CONCLUSION

For all the reasons set forth hereinabove, the Port respectfully requests that the Board issue an order compelling CORP to comply with the right of entry requested in discovery. Further, the Port respectfully requests that the Board order that CORP permit and accommodate the inspection to begin on September 11, 2008 and continue on consecutive business days until complete but not to exceed five business days and that CORP make available the necessary employees and a hy-rail for the inspection. Finally, the Port respectfully requests that the Board order that the Port be permitted to supplement the record by October 10, 2008 regarding the findings of the inspection.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sandra L. Brown", is written over a horizontal line.

Sandra L. Brown

Michael H. Higgins

David E. Benz

Troutman Sanders LLP

401 9th Street, NW

Suite 1000

Washington, DC 20004

(202) 274-2959

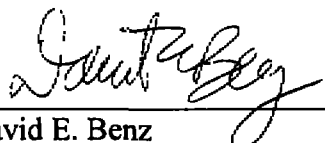
(202) 654-5603 (fax)

*Attorneys for the Oregon International
Port of Coos Bay*

August 29, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August 2008, I served a copy of the foregoing Motion to Compel Discovery from the Central Oregon & Pacific Railroad, Inc., by e-mail and/or first class mail, postage prepaid, to all parties of record in this proceeding.



David E. Benz

EXHIBIT 1

Brown, Sandra L.

From: Gene Davis [gdavis@rlbadc.com]
Sent: Thursday, March 20, 2008 5:59 PM
To: Brown, Sandra L.; Higgins, Michael H.
Cc: Charlie Banks
Subject: CORP Inspection

Sandy:

I wanted to touch base with you for a moment to inform everyone of my recent telephone conversations with the Central Oregon and Pacific Railroad (CORP) General Manager, Mr. Kevin Spradlin. On March 19, I contacted Mr. Spradlin, introduced myself and let him know that I was working for the Port of Coos Bay. I requested a visit to assess the track condition of its rail line, not including the tunnels. After a brief discussion, Mr. Spradlin stated that he would need to receive corporate approval to allow anyone on the property and would get back with me. Mr. Spradlin contacted me on the morning of March 20 to inform me that he was not going to allow any inspection at this time. He (and his corporate officials) was curious as to why anyone without having a ownership interest in the property would make such a request. I stated that I understood their position and ended the conversation.

Gene A. Davis, P.E.

Director, Transportation Engineering
R.L. Banks & Associates, Inc.
9841-A Vine Street
Soddy Daisy, TN 37379
423.332.0243 T
gdavis@rlbadc.com

Home Office

2107 Wilson Boulevard, Suite 750
Arlington, VA 22201
703.276.7522 T
703.276.7732 F

Please visit our website at www.rlbadc.com

 **COPY**

March 20, 2008

**VIA FACSIMILE 561-994-0396
and Overnight Mail**

Mr. Paul Lundberg, Vice President
RailAmerica Operations Support Group, Inc.
5300 Broken Sound Blvd.
Boca Raton, FL 33487

Dear Mr. Lundberg,


I am writing to you with respect to the Coos Bay Branch Line (the "Line"), owned by the Central Oregon & Pacific Railroad, Inc. ("CORP"), a subsidiary of RailAmerica, Inc. ("RailAmerica"). I am requesting that you grant access to the Line, so that rail consultants engaged by the Oregon International Port of Coos Bay (the "Port") may examine and inspect the condition of the Line. As you may know, one of our consultants R.L. Bank & Associates made a verbal request for such access to Kevin Spradlin but I understand that request was denied today.

The Port, in conjunction with the shippers on the Line, desire to ascertain the present condition of the Line, so that they may evaluate potential rehabilitation and repair costs, in light of various estimates that have been put forth by CORP and RailAmerica, including those contained in various proposals for a public-private partnership and a future proposal which may be received soon. In addition, the Port and the shippers desire to have a better understanding of the long term maintenance that might be necessary for this Line.

As a condition of such access, the Port and/or its rail consultants will agree to observe safety rules and protocols imposed by CORP and RailAmerica, and to enter into appropriate agreements protecting CORP and RailAmerica from liability arising in connection with the consultants' physical examination of the Line. Because the condition of the tunnels on the Line may pose additional safety issues, the Port does not seek permission to enter the tunnels at this time.

The Port and the shippers desire to see the Line reopened as soon as possible. Therefore, we request that you respond to this request within three (3) business days, so that we can expeditiously move forward with necessary arrangements.

Regards,



Jeffrey Bishop
Executive Director

cc: Governor Ted Kulongoski
Senator Ron Wyden
Senator Gordon Smith
Representative Peter DeFazio
Allyn Ford, Chairman CSSC

EXHIBIT 2

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
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1. Article Addressed to: Mr. Paul Lundberg, VP Rail America Operations Support Group Inc 5300 Broken Sound Blvd Boca Raton, FL 33487		B. Received by (Printed Name) <i>Jill Davis</i>	C. Date of Delivery <i>3/24</i>
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PS Form 3811, February 2004

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EXHIBIT 3

SIDLEY AUSTIN LLP
SIDLEY

SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
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THE FIRM ADVISORY GROUP, LLP

FOUNDED 1896

July 28, 2008

By Hand

Sandra Brown
Froutman Sanders, LLP
401 Ninth Street, NW Suite 1000
Washington, D.C. 20004

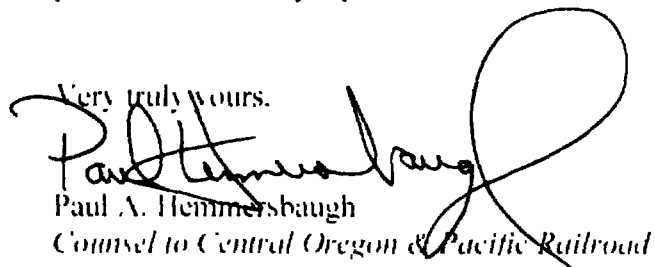
Re: Port of Coos Bay Feeder Line Application STB Fin. Dkt. No. 35160

Dear Ms. Brown:

Enclosed please find Central Oregon & Pacific Railroad Inc.'s ("CORP") Responses and Objections to the Port of Coos Bay's discovery requests in the above-captioned proceeding. Also enclosed are documents that are responsive to the Port's discovery requests. CORP is prepared to produce additional responsive documents containing confidential and commercially sensitive information, once an appropriate Protective Order is issued in this proceeding. Such an order is necessary to shield confidential information from potentially harmful public disclosure.

If you would like to discuss this request, please contact Terry Hynes or me.

Very truly yours,


Paul A. Hemmersbaugh
Counsel to Central Oregon & Pacific Railroad

PAH:aat
Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

-----)	
Oregon International Port of Coos Bay – Feeder Line)	
Application – Coos Bay Line of the Central Oregon &)	Finance Docket No. 35160
Pacific Railroad, Inc.)	
-----)	

**CENTRAL OREGON & PACIFIC RAILROAD, INC.'S
RESPONSES AND OBJECTIONS TO
OREGON INTERNATIONAL PORT OF COOS BAY'S
FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF
DOCUMENTS, AND REQUEST TO ENTER UPON LAND**

Pursuant to 49 C.F.R. Part 1114 and other applicable rules and authority, Central Oregon & Pacific Railroad, Inc. ("CORP"), by its attorneys, Sidley Austin LLP, responds as follows to Oregon International Port of Coos Bay's ("The Port") First Set of Interrogatories, Requests for Production of Documents, and Request to Enter Upon Land (the "Discovery Requests")

General Objections

CORP's General Objections, set forth herein, apply to each and every one of the specific interrogatories and document requests that follow. CORP's objections shall not waive, limit, or prejudice any objections it may later assert.

1. CORP objects to any and all definitions and or instructions to the extent they either expand upon or conflict with 49 C.F.R. Part 1114, Subpart B. CORP further objects to these Discovery Requests to the extent that they seek to impose obligations on CORP greater than, or inconsistent with, those imposed under 49 C.F.R. Part 1114, Subpart B.

2. CORP objects to each and every Interrogatory and Document Request to the extent that it seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, protection, or exemption from discovery or disclosure. In the event that any such privileged, protected, or exempt information is

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

<hr/>)	
Oregon International Port of Coos Bay – Feeder Line)	
Application – Coos Bay Line of the Central Oregon &)	Finance Docket No. 35160
Pacific Railroad, Inc)	
<hr/>)	

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CORP's General Objections, set forth herein, apply to each and every one of the specific interrogatories and document requests that follow. CORP's objections shall not waive, limit, or prejudice any objections it may later assert.

1. CORP objects to any and all definitions and or instructions to the extent they either expand upon or conflict with 49 C.F.R. Part 1114, Subpart B. CORP further objects to these Discovery Requests to the extent that they seek to impose obligations on CORP greater than, or inconsistent with, those imposed under 49 C.F.R. Part 1114, Subpart B.

2. CORP objects to each and every Interrogatory and Document Request to the extent that it seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, protection, or exemption from discovery or disclosure. In the event that any such privileged, protected, or exempt information is

inadvertently produced or provided, such disclosure or production is not intended as, and should not be construed as, a waiver of any applicable privilege, protection, or exemption.

3 CORP objects to each and every Discovery Request to the extent that it seeks information or data that is not relevant to the subject matter of this proceeding or is not reasonably calculated to lead to the discovery of admissible evidence.

4 CORP objects to each and every Document Request to the extent that it is: (a) overly broad; (b) vague and/or ambiguous; (c) fails to describe with reasonable particularity the information sought; (d) seeks information that is not within the possession, custody or control of CORP; or (e) would impose an undue burden that outweighs any relevance or probative value the information sought may have in this proceeding.

5 CORP objects to each and every Discovery Request to the extent that it requests information or material that it is: (a) already in the possession of the Port; (b) publicly available or otherwise readily available or accessible to the Port from other sources; or (c) as accessible or available to the Port as it is to CORP and producing responsive information would impose substantially the same or greater burden on CORP as it would impose on the Port.

6 CORP objects to Instruction 6 to the extent it seeks to impose obligations broader than those imposed by 49 C.F.R. Part 111.4. CORP further objects to Instruction 6 on the grounds of impracticability — if a potentially responsive document has been lost or destroyed: (a) CORP would not necessarily be aware of that event; (b) CORP would most likely be unaware of the circumstances of loss or destruction of specific documents; and (c) CORP would be unable to determine the authors, recipients, dates of creation, contents, which can usually only be obtained by reviewing the unavailable document.

7. CORP objects to the definition of "Document" to the extent it seeks to impose obligations broader than those imposed by 49 C.F.R. Part 1114. CORP further objects to the definition of Document to the extent it seeks information or data that is privileged, protected by the attorney-client work product doctrine, or otherwise protected, exempted, or excluded from discovery or disclosure by an applicable privilege, protection, rule, or doctrine. In these Responses, CORP will interpret the term "Document" as excluding any data or other information that is protected from discovery or disclosure by such privilege, protection, doctrine, or rule.

8. CORP objects to the multiple definitions of "Identify" to the extent they seek to impose obligations beyond, in addition to, or inconsistent with discovery obligations under 49 C.F.R. Part 1114. CORP further objects to the multiple definitions of "Identify" as vague and ambiguous.

9. CORP objects to the definitions of " 'Identify' when used in reference to a natural person" or to other entities as seeking to impose obligations or requirements beyond, in addition to, or inconsistent with discovery obligations under 49 C.F.R. Part 1114. CORP has no duty to investigate or disclose the business addresses, telephone numbers, employers, and/or job titles or business activities of third parties. Furthermore, these definitions would impose an undue burden that outweighs any relevance or probative value the information sought may have in this proceeding.

10. CORP objects to the definition of " 'Identify' when used in connection with a document" as seeking to impose obligations or requirements beyond, in addition to, or inconsistent with discovery obligations under 49 C.F.R. Part 1114. CORP has no duty to search for, gather, and catalog every document possibly implicated by an interrogatory with the more than eight pieces of information specified as required by the definition. This definition would

impose an undue burden that outweighs any relevance or probative value the information sought may have in this proceeding. CORP will respond to any interrogatory asking it to "identify" particular documents as if it were a request for production of those documents and respond in accordance with 49 C.F.R. § 1114.30.

11 CORP objects to the definitions of "relating to" and "relates to" as overly broad, unduly burdensome, vague, and ambiguous.

12 CORP objects to the Port's requests for "all" information and documents as unduly burdensome. CORP will produce such relevant, non-privileged information as can be located in a reasonable search.

13. CORP objects to the Port's requests relating to information relating to "the Line" as defined in Definition No. 9 to the extent that these requests call for CORP to perform special studies to obtain this information. CORP does not separately maintain data regarding "the Line" (as defined by the Port) in the ordinary course of business. CORP further objects to the definition of "Line" to the extent that it includes track over which CORP discontinued service pursuant to the authority granted in STB Docket No. AB-515 (Sub-No. 1X), *Central Oregon & Pac. R.R. Inc. Discontinuance Exception in Coos County, OR*.

14 CORP objects to the Port's failure to limit its requests to a relevant time period as overbroad and unduly burdensome. The Port seeks information that is not relevant to this proceeding and is not reasonably calculated to lead to the production of admissible evidence. Subject to, and without waiving this objection, unless otherwise indicated, CORP's responses will cover the period from 2005 to the present.

15. CORP does not concede the relevance, materiality, competence, or admissibility as evidence of any of the information requested in these Discovery Requests. By producing

responsive documents or information. CORP does not concede such information or documents are relevant, material, or admissible into evidence, and any such production is not intended to waive any of CORP's objections to any of these Discovery Requests. CORP reserves its rights to object on any ground to the use of the responses provided herein, in this proceeding or any appeal thereof, or in any subsequent proceeding or action.

16. CORP objects that the Port has not moved for a Protective Order in this proceeding. CORP objects to producing commercially sensitive, confidential and proprietary information, including shipper-specific data, in the absence of an appropriate Protective Order. Subject to the objections asserted in this response, CORP will produce responsive documents and business records to the Port as soon as the Board enters an appropriate protective order, and eligible representatives of the Port execute the confidentiality agreements or undertakings prescribed by such Protective Order.

17. CORP's General Objections, Specific Objections, and responses are based upon information presently known to it. CORP reserves the right to rely upon facts, documents, or other evidence that it may develop or that may subsequently come to its attention; to assert additional objections; and to supplement or amend these responses at any time.

Specific Objections

In addition to its General Objections (which shall apply in full to each and every Discovery Request, without further enumeration), CORP also asserts Specific Objections to each Interrogatory and Document Request. CORP preserves all of its General Objections set forth above, and none of the following Specific Objections shall waive or limit the scope, breadth, generality, or applicability of those General Objections.

INTERROGATORIES

Interrogatory No. 1 Please state the milestone markers for the portion(s) of the Line that is (are) owned by CORP.

Response:

Subject to the General Objections, CORP responds that it owns the portion of the Line between Milepost 652.11 and Milepost 763.13.

Interrogatory No. 2 Please state the name(s) and milepost marker(s) for all stations located on the portion(s) of the Line that is (are) owned by CORP.

Response:

CORP objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in CORP's Application for authority to abandon and discontinue service over the Line filed July 14, 2008 in STB Docket No. AB-515 (Sub-No. 2) ("Abandonment Application"); (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) ("[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means."). Subject to and without waiving its objections, CORP responds that the stations on the portion of the Line owned by CORP are: Danebo (MP 651.11); Veneta (MP 660.50); Noti (MP 665.30); Vaughn (MP 668.30); Richardson (MP 685.00); Swisshome (MP 697.10); Suislaw (MP 698.80); Tide (MP 699.20); Mapleton (MP 705.30); Beck (MP 710.30); Wendson (MP 715.00); Cushman (MP 716.30); Canary (MP 721.30); Kroll (MP 738.30); Gardiner Junction (MP 739.30); Reedsport (MP 743.00); Lakeside (MP 752.10); Hauser (MP 759.30); and Cordes (MP 763.00).

Interrogatory No. 3 Please state CORP's system operating revenues and operating costs from providing rail transportation services by year for each of the following years: 2007, 2006, 2005, 2004, and 2003.

Response:

CORP specifically objects to this Interrogatory as irrelevant to this proceeding. The annual revenues and operating costs of CORP as a whole have no relevance to the Feeder Line Application. CORP further objects to this Interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence by seeking irrelevant information for years prior to 2005.

Interrogatory No. 4 Please state CORP's operating revenues and operating costs from providing rail transportation service by each major branch of the CORP rail system for each of the years 2007, 2006, 2005, 2004, and 2003.

Response:

CORP specifically objects to this Interrogatory as irrelevant to this proceeding. The annual revenues and operating costs of CORP's branches have no relevance to the Feeder Line Application. CORP further objects to this Interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence by seeking irrelevant information for years prior to 2005. CORP also objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is publicly available, or (ii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) ("[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.") In addition, CORP specifically objects to this Interrogatory because CORP does not maintain data by branch line in the ordinary course of business and therefore the Interrogatory would require CORP to perform a special study. *See e.g., Entergy Ark. Inc. v. Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008). Subject to and without waiving its objections, CORP responds that it will provide the Port with estimated

operating revenues and operating costs for the Coos Bay Subdivision (defined as the CORP-owned and CORP-leased line from Danebo to Coquille) for 2005, 2006, and 2007, subject to an appropriate protective order

Interrogatory No. 5 Please state CORP's system operating profits (net revenues) for each of the years 2007, 2006, 2005, 2004, and 2003.

Response:

CORP specifically objects to this Interrogatory as irrelevant to this proceeding. The system operating profits of CORP as a whole have no relevance to the Feeder Line Application. CORP further objects to this Interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence by seeking irrelevant information for years prior to 2005.

Interrogatory No. 6 Please state CORP's operating profits (or losses) from rail operations on the Line for each of the years 2007, 2006, 2005, 2004, and 2003.

Response:

CORP specifically objects to this Interrogatory as irrelevant to this proceeding. CORP's operating losses from rail operations on the Line in past years dating back to 2003 are not relevant to the issues raised in the Feeder Line Application. CORP further objects to this Interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence by seeking irrelevant information for years prior to 2005. In addition, CORP specifically objects to this Interrogatory because CORP does not maintain data by branch line in the ordinary course of business and therefore the Interrogatory would require CORP to perform a special study. See e.g., *Interagency Inc. v. Union Pac. R.R. Co.*, SIB Docket No. 42104 (May 19, 2008). Subject to and without waiving its objections, CORP responds that it will provide the Port with estimated total operating losses for the Coos Bay Subdivision (defined as the CORP-owned and CORP-leased line from Danebo to Coquille) for 2005, 2006, and 2007, subject to an appropriate protective order.

Interrogatory No. 7 Please explain the basis for the statement "Coos Bay line currently operates at an annual deficit of approximately \$1,500,000" as contained in the CORP / RailAmerica presentation, "Central Oregon & Pacific Railroad Partnership for Coos Bay Rail Line" dated Nov. 14, 2007.

Response:

CORP objects to this Interrogatory as unduly burdensome to the extent that it seeks information that (i) is contained in the CORP Abandonment Application or in CORP's submissions in Finance Docket No. 35130; (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) ("[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means."). Subject to and without waiving its objections, CORP states that the estimate was based on an allocation of CORP's total 2006 revenues and costs among the Coos Bay Subdivision and other CORP subdivisions. CORP also refers the Port to CORP's response to Interrogatory No. 6 and to Exhibit 1 to CORP's Abandonment Application.

Interrogatory No. 8 Please identify all sources of revenue arising from the Line that are not associated with railroad operations, and identify the amount of such revenues, by type, on an annual basis for years 2007, 2006, 2005, 2004, and 2003.

Response:

CORP specifically objects to this Interrogatory as irrelevant to this proceeding. CORP's non-rail revenues on the Line in past years dating back to 2003 are not relevant to the issues raised in the Feeder Line Application. CORP further objects to this Interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence by seeking irrelevant information for years prior to 2005. In addition, CORP specifically objects to this Interrogatory because CORP does not maintain data by branch line in the ordinary course of business and therefore the Interrogatory would require CORP to perform a special study. *See*

e.g., *Entergy Ark. Inc. v. Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008). Subject to and without waiving its objections, CORP responds that for purposes of the Abandonment Application, CORP prepared certain special studies for the Abandonment Segment and Discontinuance Segment of the Coos Bay Subdivision (as defined in the Application). Those special studies include calculations of non-rail revenue for the Coos Bay Subdivision for the Base Year and the Forecast Year. See Abandonment Application Ex. 1.

Interrogatory No. 9 Please generally describe CORP's regular, weekly service schedule for the Line that was applicable in 2007, including (a) the number of inbound and outbound train trips; (b) the number of shippers served; (c) the approximate number of carloads moved inbound and outbound; (d) locations of switching operations; (e) switching services performed; (f) the number of train crew personnel involved in CORP's weekly operations; and (g) the number of locomotives used to provide the service

Response:

CORP objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application; (ii) is publicly available; or (iii) is otherwise readily available to the Port. See *Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) ("[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.") Subject to and without waiving its objections, CORP states that information sufficient to derive the answer to this interrogatory may be found in the Abandonment Application and in business records that will be produced to the Port.

Interrogatory No. 10 If CORP last provided regular service on the Line on other than a weekly basis, then please generally describe that service, including (a) the number of inbound and outbound train trips; (b) the number of shippers served; (c) the approximate number of carloads moved inbound and outbound; (d) locations of switching operations; (e) switching services performed; (f) the number of train crew personnel; and, (g) the number of locomotives used to provided the service.

Response:

See response to Interrogatory No. 9

Interrogatory No. 11 Please identify the CORP employee who had primary responsibility for CORP's rail operations on the Line at the time CORP announced the Embargo.

Response:

CORP specifically objects to the vague and ambiguous term "primary responsibility." Subject to and without waiving its objections, CORP responds that Kevin Spradlin, General Manager of CORP, was responsible for rail operations on the Line in September 2007.

Interrogatory No. 12 Please identify by name and milepost all customers on the Line that were served by CORP in the year 2007.

Response:

CORP objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application; (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, SFB Docket Nos. 42069, 42070 (July 26, 2002) ("[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means."). CORP further objects to the request for customers to be identified by "milepost." CORP does not maintain customer milepost data in the ordinary course of business; the Port can determine the milepost location of customers on the Line from the business records CORP will supply, which identify customers by station, and during the course of any inspection conducted by the Port pursuant to its Request for Right to Enter Upon and Inspect Land. Subject to and without waiving its objections, CORP responds that it will produce business records from which the answer to this interrogatory can be derived, namely records identifying 2007 traffic on the Line by shipper, commodity, and station. CORP also refers the Port to the Verified Statement of John H. Williams in the Abandonment Application and Attachments B, C, and D to that Verified Statement. Mr. Williams' statement analyzes the traffic on the Coos Bay Subdivision and provides detailed data about that traffic in 2005, 2006, and 2007.

Interrogatory No. 13 For each customer identified in response to Interrogatory No. 12, please state the number of inbound and the number of outbound railcar shipments that CORP handled and, to the extent possible, the respective customer commodities and railcar types used for service.

Response:

CORP objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application, (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) (“[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.”) CORP also specifically objects to this Interrogatory to the extent that a response would require CORP to perform a special study. *See, e.g., Entergy Ark., Inc. v. Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008). In particular, CORP does not maintain data on railcar types used in handling specific shipments in the ordinary course of business. (As noted in the application, 97% of traffic on the Line consists of forest products, and the Port readily can determine the appropriate car types for transporting this traffic.) Subject to and without waiving its objections, CORP responds that it will produce business records from which information responsive to this interrogatory can be derived, namely records identifying 2007 traffic on the Line by shipper, commodity, and station. CORP also refers the Port to the Verified Statement of John H. Williams in the Abandonment Application and Attachments B, C, and D to that Verified Statement. Mr. Williams’ statement analyzes the traffic on the Coos Bay Subdivision and provides detailed data about that traffic in 2005, 2006, and 2007.

Interrogatory No. 14 Please identify by name and milepost all customers on the Line that were served by CORP in the year 2006.

Response:

CORP objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application, (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) (“[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.”) CORP further objects to the request for customers to be identified by “milepost.” CORP does not maintain customer milepost data in the ordinary course of business; the Port can determine the milepost location of customers on the Line from the business records CORP will supply, which identify customers by station, and during the course of any inspection conducted by the Port pursuant to its Request for Right to Enter Upon and Inspect Land. Subject to and without waiving its objections, CORP responds that it will produce business records from which the answer to this interrogatory can be derived, namely records identifying 2006 traffic on the Line by shipper, commodity, and station. CORP also refers the Port to the Verified Statement of John H. Williams in the Abandonment Application and Attachments B, C, and D to that Verified Statement. Mr. Williams’ statement analyzes the traffic on the Coos Bay Subdivision and provides detailed data about that traffic in 2005, 2006, and 2007.

Interrogatory No. 15 For each customer identified in response to Interrogatory No. 14, please state the number of inbound and the number of outbound railcar shipments that CORP handled and, to the extent possible, the respective customer commodities and railcar types used for service.

Response:

CORP objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application, (ii) is publicly

available; or (iii) is otherwise readily available to the Port. See *Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) (“[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.”). CORP also specifically objects to this Interrogatory to the extent that a response would require CORP to perform a special study. See, e.g., *Entergy Ark. Inc. v. Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008). In particular, CORP does not maintain data on railcar types used in handling specific shipments in the ordinary course of business. (As noted in the application, 97% of traffic on the Line consists of forest products, and the Port readily can determine the appropriate car types for transporting this traffic.) Subject to and without waiving its objections, CORP responds that it will produce business records from which information responsive to this interrogatory can be derived, namely records identifying 2006 traffic on the Line by shipper, commodity, and station. CORP also refers the Port to the Verified Statement of John H. Williams in the Abandonment Application and Attachments B, C, and D to that Verified Statement. Mr. Williams’ statement analyzes the traffic on the Coos Bay Subdivision and provides detailed data about that traffic in 2005, 2006, and 2007.

Interrogatory No. 16 Please identify by name and milepost all customers on the Line that were served by CORP in the year 2005.

Response:

CORP objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application, (ii) is publicly available, or (iii) is otherwise readily available to the Port. See *Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) (“[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.”). CORP further objects to the request for customers to be identified by “milepost.” CORP does

not maintain customer milepost data in the ordinary course of business; the Port can determine the milepost location of customers on the Line from the business records CORP will supply, which identify customers by station, and during the course of any inspection conducted by the Port pursuant to its Request for Right to Enter Upon and Inspect Land. Subject to and without waiving its objections, CORP responds that it will produce business records from which the answer to this interrogatory can be derived, namely records identifying 2005 traffic on the Line by shipper, commodity, and station. CORP also refers the Port to the Verified Statement of John H. Williams in the Abandonment Application and Attachments B, C, and D to that Verified Statement. Mr. Williams' statement analyzes the traffic on the Coos Bay Subdivision and provides detailed data about that traffic in 2005, 2006, and 2007.

Interrogatory No. 17 For each customer identified in response to Interrogatory No. 16, please state the number of inbound and the number of outbound railcar shipments that CORP handled and, to the extent possible, the respective customer commodities and railcar types used for service.

Response:

CORP objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application; (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) ("[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means"). CORP also specifically objects to this Interrogatory to the extent that a response would require CORP to perform a special study. *See e.g., Entergy Ark. Inc. v. Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008). In particular, CORP does not maintain data on railcar types used in handling specific shipments in the ordinary course of business. (As noted in the application, 97% of traffic on the Line consists of forest products, and the Port readily can

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Interrogatory No. 18 For each year 2005, 2006, 2007, state the total number of railcars handled by CORP over the Line by type of commodity.

Response:

CORP objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application; (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) ("[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means."). CORP also specifically objects to this Interrogatory on the grounds that response would require CORP to perform a special study. *See, e.g., Entergy Ark., Inc. v. Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008). Subject to and without waiving its objections, CORP responds that it will produce business records from which information responsive to this interrogatory can be derived, namely records identifying 2005, 2006, and 2007 traffic on the Line by shipper, commodity, and station. CORP also refers the Port to the Verified Statement of John H. Williams in the Abandonment Application and Attachments B, C, and D to that Verified Statement. Mr. Williams' statement analyzes the traffic on the Coos Bay Subdivision and provides detailed data about that traffic in 2005, 2006, and 2007.

Interrogatory No. 19 Please identify all reports, surveys, samples, studies, memoranda, or compilations of information pertaining to the physical condition of the Line.

Response:

CORP specifically objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application; (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) (“[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.”). CORP also specifically objects to this Interrogatory on the grounds that response would require CORP to perform a special study. *See, e.g., Entergy Ark., Inc. v. Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008). CORP further objects to this Interrogatory as vague, ambiguous, and overbroad. Subject to and without waiving its objections, CORP will produce business records from which information responsive to this interrogatory may be derived or ascertained.

Interrogatory No. 20 Please identify all reports, surveys, samples, studies, memoranda or compilations of information pertaining to the dollar value of the physical assets (track, ties, other track material) comprising the Line.

Response:

CORP specifically objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application; (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) (“[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.”). CORP also specifically objects to this Interrogatory on the grounds that response would require CORP to perform a special study. *See, e.g., Entergy Ark., Inc. v. Union Pac. R.R. Co.*, STB

Docket No. 42104 (May 19, 2008). CORP further objects to this Interrogatory as vague, ambiguous, and overbroad. Subject to and without waiving its objections, CORP responds that it has no reports, surveys, samples, studies, memoranda, or compilations of information related to the dollar value of the physical condition of the Line, other than the analysis of the Coos Bay Subdivision provided in CORP's Abandonment Application and workpapers.

Interrogatory No. 21 Please identify (including nature of the work and milepost marker) and state the dollar amount of each expenditure on any physical assets (track, ties, other track material) since September 22, 2007 that was made by CORP for the purpose of repairing or rehabilitating the Line.

Response:

CORP specifically objects to this Interrogatory because it seeks information that is irrelevant to the subject matter of this proceeding. CORP also specifically objects to this Interrogatory on the grounds that response would require CORP to perform a special study. *See, e.g., Energy Ark., Inc. v. Union Pac. R.R. Co.*, SIB Docket No. 42104 (May 19, 2008). In particular, CORP does not in the ordinary course of business account for maintenance of way expenses by location or milepost marker. *See* Abandonment Application, V.S. Baranowski at 4-5. Subject to and without waiving its objections, CORP responds that since the Coos Bay Subdivision has been embargoed CORP employees have removed fallen trees and debris from the track on the embargoed line. CORP also has installed fences and gates on tunnels on the embargoed line. On the nonembargoed line between Vaughn and Danebo, CORP has performed normal maintenance. Because CORP does not account for maintenance expenses by location, CORP cannot state the dollar amount of its maintenance expenses for this segment since September 22, 2007. CORP notes that it has provided maintenance of way expense calculations for the Coos Bay Subdivision during the Base Year. *See* Abandonment Application, Ex. 1 and V.S. Baranowski.

Interrogatory No. 22 Please state the total amount of money that CORP has spent on the repair or rehabilitation of the Line since Sept. 22, 2007.

Response:

CORP specifically objects to this Interrogatory because it seeks information that is irrelevant to the subject matter of this proceeding. CORP also specifically objects to this Interrogatory on the grounds that response would require CORP to perform a special study. *See e.g., Entergy Ark. Inc. v. Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008). In particular, CORP does not in the ordinary course of business account for maintenance of way expenses by location or milepost marker. *See* Abandonment Application, V.S. Baranowski at 4-5. Subject to and without waiving its objections, CORP responds that it cannot state the dollar amount of its maintenance expenses for the repair or rehabilitation of the Line since September 22, 2007 because it does not maintain that information in the ordinary course of business. CORP notes that it has provided maintenance of way expense calculations for the Coos Bay Subdivision during the Base Year. *See* Abandonment Application, Ex. I and V.S. Baranowski.

Interrogatory No. 23 Please identify all plans, proposals, presentations, or reports related to resumption of rail service over the Line by CORP after Sept. 22, 2007.

Response:

CORP specifically objects to this Interrogatory because it seeks information that is irrelevant to the subject matter of this proceeding. CORP further objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application, (ii) is publicly available, or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) (“[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.”). CORP also objects to the extent that this

Interrogatory seeks information that is in the Port's possession or is otherwise available to it. Subject to and without waiving its objections, CORP responds that during October and November 2007 it discussed proposals for restoring service on the line to shippers, Oregon legislators, and the Oregon Department of Transportation. On November 14, 2007 CORP presented a plan for a public private partnership to restore service on the Line. This plan was presented to the Port and other interested stakeholders. After CORP's initial proposal was rejected, CORP presented an alternative plan to restore service on the Coos Bay Line, which was presented to Oregon Governor Kulongowski on April 9, 2008. CORP's proposals are described in more detail in CORP's Response to the Board's Order to Show Cause, filed on May 12, 2008 in STB Finance Docket No. 35130. Indeed, CORP proposals were attached to the Port's June 3, 2008 reply filing in that proceeding as Exhibits 23 and 30.

Interrogatory No. 24 Please identify all plans, proposals, presentations, or reports of CORP related to removing the conditions and/or circumstances that caused CORP to embargo the Line on or about Sept. 21, 2007.

Response:

CORP specifically objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application; (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) ("[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.") CORP also objects to the extent that this Interrogatory seeks information that is in the Port's possession or is otherwise available to it. Subject to and without waiving its objections, CORP incorporates by reference its response to Interrogatory No. 23.

Interrogatory No. 25 Please identify the CORP employee who has primary responsibility for rehabilitation or repair of the Line and/or the circumstances that caused CORP to embargo the Line.

Response:

CORP specifically objects to the vague and ambiguous term "primary responsibility." Subject to and without waiving its objections, CORP responds that Kevin Spradlin, General Manager of CORP, was responsible for rail operations on the Line in September 2007.

Interrogatory No. 26 Please identify all reports, studies, plans, presentations, or proposals relating to CORP's operation of the Line prepared since January 1, 2004.

Response:

CORP specifically objects to this Interrogatory because it seeks information that is irrelevant to the subject matter of this proceeding. CORP also objects because the Interrogatory's request for "all" reports, studies, plans, presentations, or proposals related to operation of the Line is grossly overbroad. Subject to and without waiving its objections, CORP states that information relevant to CORP's operation of the Coos Bay Subdivision is set forth in the CORP Abandonment Application and in CORP's operating plan in existence as of the date of the embargo, which CORP will produce to the Port subject to an appropriate protective order.

Interrogatory No. 27 Please describe CORP's trackage, haulage, or other rights over any railroad line(s) owned by the Union Pacific Railroad ("UPRR") or any other railroad in the vicinity of Danebo, Eugene, and/or Coquille including the distances and milepost markers relevant to those rights, the fees or compensation paid to UPRR or other railroad on an annual basis, and the nature of the right(s).

Response:

CORP specifically objects to this Interrogatory because it seeks information that is irrelevant to the subject matter of this proceeding. CORP also specifically objects to the Interrogatory's requests for calculations of "fees or compensation" because CORP does not maintain that information in the ordinary course of business and calculating it would require

CORP to perform a special study. See e.g., *Entergy Ark. Inc. v Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008). Subject to and without waiving its objections, CORP states that information responsive to this interrogatory may be derived or ascertained from business records that were appended to CORP's Response to the Board's Order to Show Cause, filed on May 12, 2008 in STB Finance Docket No. 35130, namely CORP's agreements with Union Pacific, and from business records that CORP will produce to the Port subject to an appropriate protective order. CORP also refers the Port to the Verified Statement of Paul Lundberg at 3-4 in CORP's Abandonment Application.

Interrogatory No. 28 On a per car basis, please state the compensation paid by UPRR to CORP as a handling carrier on the Line for the years 2007, 2006, 2005, 2004, and 2003.

Response:

CORP specifically objects to this Interrogatory because it seeks information that is irrelevant to the subject matter of this proceeding. CORP further objects to the particularly irrelevant request for information that predates 2005. Subject to and without waiving its objections, CORP refers the Port to CORP's Response to the Board's Order to Show Cause, filed on May 12, 2008 in STB Finance Docket No. 35130, and particularly to the Verified Statement of Paul Lundberg at pages 3-4.

Interrogatory No. 29 For the years 2007, 2006, 2005, 2004, and 2003, please state the total compensation paid by UPRR to CORP as a handling carrier on the Line.

Response:

CORP specifically objects to this Interrogatory because it seeks information that is irrelevant to the subject matter of this proceeding. CORP further objects to the particularly irrelevant request for information that predates 2005. Moreover, CORP specifically objects to this Interrogatory because CORP does not track total handling carrier compensation from Union Pacific for service on the Line in the ordinary course of business, and compiling this information

would require CORP to undertake a burdensome special study. *See, e.g., Entergy Ark. Inc. v Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008)

Interrogatory No. 30 If you contend that UPRR's compensation of CORP as a handling carrier on a per car basis was unreasonably low or non-compensatory in any respect for the years 2007, 2006, 2005, 2004, and 2003, then please explain why the compensation was unreasonably low or non-compensatory, and what amount would have been compensatory.

Response:

CORP specifically objects to this Interrogatory because it seeks information that is irrelevant to the subject matter of this proceeding. CORP further objects to the particularly irrelevant request for information that predates 2005. CORP specifically objects to the terms "unreasonably low" and "non-compensatory" as undefined, susceptible of multiple interpretations, and seeking legal conclusions. To the extent that these terms can be understood and do not seek legal conclusions, the information sought in this Interrogatory cannot be obtained without performing a special study to determine a compensatory rate. Subject to and without waiving its objections, CORP states that its Abandonment Application details the unprofitability of the Line and the necessary subsidy for profitable service over the Line. *See* Abandonment Application Ex. 1. CORP notes in particular the fact that its projected traffic increase between the Base Year and the Forecast Year resulted in greater projected operating losses—a fact that is attributable to the cap on the annual adjustment to the Handling Carrier Charge paid by UP to CORP. *See* Abandonment Application, V.S. Baranowski at 14.

Interrogatory No. 31 Please describe the physical condition of the Line, including the condition of the track, ties, other track materials, based on your most recent inspection, and identify the date of the inspection and the names of the persons who conducted it.

Response:

Subject to and without waiving its objections, CORP states that the most recent comprehensive track inspection on the Line was conducted November 4–7 2007 by various

Federal Rail Administration Track Safety Inspectors accompanied by CORP personnel. The overall tie condition from MP 720 – MP 765 is good. The tie conditions outside of these limits are marginal for Class 2 track in most areas and marginal for Class 1 in others. The surface of the track is poor due to the extreme amount of precipitation this Line gets and the resulting poor ballast conditions. The overall rail condition is good with the mainline comprised of 5 1/2" base rail or larger. Some of the 113# jointed rail segments are beginning to show indications of becoming "surface bent" due to the accumulated tonnage and 4 hole angle bars. This condition makes it difficult to keep the joints surfaced. The high precipitation volume is conducive to rapid vegetation growth that must be periodically mowed back. Further information from which the answer to this interrogatory may be ascertained is contained in CORP's Abandonment Application and in business records that will be produced subject to an appropriate protective order.

Interrogatory No. 32 Please identify each formal or informal complaint regarding your rail service on the Line made by any shipper, Federal, State, or local government, including (a) the name of the person making the complaint, (b) the subject matter of the complaint; (c) the date of the complaint; (d) any actions you took in response to the complaint; (e) the date of your response actions, if any; and (f) the management-level person in your company primarily responsible for responding the complaint.

Response:

CORP specifically objects to this Interrogatory because it seeks information that is irrelevant to the subject matter of this proceeding. Subject to and without waiving its objections, CORP states that the answer to this Interrogatory may be derived or ascertained from business records that CORP will produce to the Port subject to an appropriate protective order.

Interrogatory No. 33 Please identify each person you have retained, or expect to retain as an expert witness or outside consultant in connection with this proceeding, or the STB's show cause proceeding.

Response:

CORP specifically objects to this interrogatory because it is premature and calls for privileged work product information.

Interrogatory No. 34 Please state the number of derailments that occurred on the Line for each year from 2003 to 2007, and state (a) the location of the derailment; (b) the cause (to the extent known); (c) which portions of the Line were taken out of service, if any; and (d) the number of hours that any such portions, respectively, were out of service.

Response:

CORP specifically objects to this Interrogatory on the grounds that response would require CORP to perform a special study. *See, e.g., Entergy Ark. Inc. v Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008). CORP further objects to this Interrogatory as irrelevant to the subject matter of this proceeding. Subject to and without waiving its objections, CORP states that information responsive to this interrogatory may be derived or ascertained from business records that CORP will produce to the Port subject to an appropriate protective order.

Interrogatory No. 35 Please identify each occasion when the Line was taken out of service between January 1, 2003 and the present, in whole or in part, for any reason or cause, other than routine maintenance, for any period of time greater than four consecutive hours, and for each such occasion, state (a) the reason or cause for the Line being taken out of service (b) the portions of the Line taken out of service; (c) the amount of time, in hours, that the Line (or portions thereof) was out of service; and (d) the action(s) taken to restore service.

Response:

CORP specifically objects to this Interrogatory as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application, (ii) is publicly available, or (iii) is otherwise readily available to the Port. *See Duke Energy v Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) (“[I]t is unduly burdensome to require a party to

produce information that is available from public records or through less intrusive means”). CORP objects to the request to identify every service outage of more than four hours as grossly overbroad; the Interrogatory would have CORP list every instance where weather conditions, a derailment or other circumstances caused the briefest interruption of service. CORP also specifically objects to this Interrogatory on the grounds that response would require CORP to perform a special study. See, e.g., *Entergy Ark., Inc. v. Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008). CORP simply does not maintain or compile the sort of detailed information the Port requests. CORP further objects to this Interrogatory as irrelevant to the subject matter of this proceeding, and particularly irrelevant for time periods before 2005. Subject to and without waiving its objections, CORP states that in November 2006, Tunnel No. 15 near Milepost 721 on the Line collapsed, resulting in the temporary closure of the tunnel while repairs could be effected. CORP further states that from time to time service on the Line has been briefly suspended as a result of weather conditions (such as snowstorms), a derailment or other circumstances.

Interrogatory No. 36 Please state whether CORP interchanges rail traffic with the Portland & Western Railroad (“P&W”) or the BNSF Railway Company (“BNSF”) at or in the vicinity of Eugene, Oregon.

Response:

Subject to and without waiving its objections, CORP states that it interchanges traffic with the Portland & Western Railroad (“P&W”) in the vicinity of Eugene, Oregon and that CORP does not interchange traffic with the BNSF Railway Company in the vicinity of Eugene, Oregon.

Interrogatory No. 37 If CORP does interchange rail traffic with P&W or BNSF, at or in the vicinity of Eugene, Oregon, then please identify the typical location(s) of such interchange(s), and state the approximate number of times such interchange(s) occur on a weekly basis, and the approximate number of cars interchanged per week for each railroad (CORP, P&W, and BNSF).

Response:

Subject to and without waiving its objections, CORP states that it typically interchanges 81 inbound carloads of rail traffic weekly with the P&W at Eugene, Oregon. CORP typically interchanges 52 outbound carloads weekly with the P&W at Eugene. Many of these interchanged carloads do not travel over the Coos Bay Subdivision. CORP does not interchange traffic with the BNSF Railway Company in the vicinity of Eugene, Oregon.

Interrogatory No. 38 Please describe all capital investment, including milepost marker, cost, and nature of the work, on the Line in the last five years.

Response:

CORP objects to this Interrogatory as irrelevant to the subject matter of this proceeding. CORP also objects to this Interrogatory on the grounds that a response would require CORP to perform a special study. *See, e.g., Entergy Ark., Inc. v. Union Pac. R.R. Co.*, STB Docket No. 42104 (May 19, 2008). CORP does not maintain capital investment data by branch or by milepost marker in the ordinary course of business. Subject to and without waiving its objections, CORP states that information responsive to this interrogatory may be derived or ascertained from business records that CORP will produce to the Port subject to an appropriate protective order.

Interrogatory No. 39 Please identify and describe all locomotives and rolling stock used by CORP on the Line, including the assigned locomotive or railcar number, the type of locomotive or railcar, and the nature of CORP's interest (such as leased or owned).

Response:

CORP specifically objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. CORP objects to the requests for locomotive and railcar numbers as particularly irrelevant and burdensome. Subject to and without waiving its objections, CORP provided service over the Line with one SW 1500 switch engine in Coos Bay, two GP-38 locomotives from Coos Bay to Mapleton, and two GP-40 locomotives with two slugs from Mapleton to Eugene. All of these locomotives were leased by CORP. Cars on the Line were generally supplied by Union Pacific, and included box cars, hoppers, centerbeams and flats. In addition, Georgia Pacific provided its own cars for transportation of wood chips and logs.

Interrogatory No. 40 Please explain in summary form how CORP services, repairs, and/or maintains all locomotives and rolling stock identified and described in response to Interrogatory No. 39, including the locomotive or railcar shop location (or other service location) and whether CORP typically performs such work or engages contractors.

Response:

Subject to and without waiving its objections, CORP responds that locomotives used on the Line typically were serviced by CORP personnel at a CORP facility in Eugene, Oregon. Repairs to railcars on the Line were typically performed by CORP personnel who would travel to the location of the railcar needing repair.

Interrogatory No. 41 Describe all known instances of stolen, lost, or vanished rail, equipment, or track assets on the Line since the Embargo, including their approximate value and whether the rail, equipment, or assets were replaced by CORP.

Response:

Subject to and without waiving its objections, CORP responds that it is not aware of any instances of stolen, lost, or vanished rail equipment or track assets on the Line since the embargo.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

CORP incorporates by reference to each of its responses to the following document requests all of its General Objections to these Discovery Requests, and all of its specific objections to the foregoing Interrogatories, to the full extent they are applicable.

Document Request No. 1 Please produce all documents relating to CORP's responses to Interrogatories 1 through 41.

Response:

CORP specifically objects to the vague and overbroad request for "all" documents that "relate to" to its interrogatory responses. Subject to and without waiving its objections, CORP will produce documents referred to in its interrogatory responses subject to an appropriate protective order.

Document Request No. 2 Please produce your most recent track charts and maps for the Line.

Response:

CORP specifically objects to the Port's duplicative and burdensome request, which asks CORP to re-produce many track charts and maps that are in the Port's possession. Subject to and without waiving its objections, CORP will produce responsive documents in its possession, custody, or control that have not previously been produced to the Port

Document Request No. 3 Please produce all maps or other documents showing ownership interests in the real property comprising the Line.

Response:

CORP objects to this Request as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application; (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) (“[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.”). Subject to and without waiving its objections, CORP will produce valuation maps for the segment of the Line between Vaughn and Danebo to the Port. The Port already possesses valuation maps for the remainder of the Line owned by CORP. CORP also refers the Port to the Verified Statements of Charles W. Rex III and Patricia L. Chapman appended to the Abandonment Application, and all supporting exhibits and workpapers. Additional documents related to ownership interests in the real property comprising the Line may be reviewed at the offices of Sidley Austin LLP, 1501 K Street, N.W., Washington, D.C. 20005, subject to the entry of an appropriate protective order.

Document Request No. 4 Please produce all maps or other documents showing the boundaries of real property in which CORP has a fee interest along or within the corridor of the Line.

Response:

CORP objects to this Request as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application; (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) (“[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.”). Subject to

and without waiving its objections, CORP refers the Port to its Response to Document Request No. 3. Additional documents responsive to this Request may be reviewed at the offices of Sidley Austin LLP, 1501 K Street, N.W., Washington, D.C. 20005, subject to the entry of an appropriate protective order.

Document Request No. 5 Please produce all documents relating to the value of the real property underlying the portion of the Line owned by CORP.

Response:

CORP objects to this Request as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application; (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) (“[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.”). Subject to and without waiving its objections, CORP refers the Port to the Verified Statement of Charles W. Rex III appended to the Abandonment Application and to supporting workpapers. Additional documents responsive to this Request may be reviewed at the offices of Sidley Austin LLP, 1501 K Street, N.W., Washington, D.C. 20005, subject to the entry of an appropriate protective order.

Document Request No. 6 Please produce all documents relating to the value of the tracks, ties, and other track material comprising the portion of the Line owned by CORP.

Response:

CORP objects to this Request as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application, (ii) is publicly available, or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) (“[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means.”). Subject to and without waiving its objections, CORP refers the Port to Attachment 1 to the Verified

Statement of Mark R. Bader, attached to the Abandonment Application, and to supporting workpapers. Mr. Bader's verified statement in the Abandonment Application only includes the portion of the Line between Vaughn and Cordes. CORP does not currently have any responsive documents related to the value of tracks, ties, and other track material for the segment between Vaughn and Danebo. At this time CORP has not performed the special study necessary to determine this information, but it will do so in preparing its evidence in this proceeding.

Document Request No. 7 Please produce all documents related to any notice that CORP provided to shippers on the Line before it embargoed the Line on or about Sept. 21, 2007.

Response:

Subject to and without waiving its objections, CORP will produce responsive documents in its possession, custody, or control that have not previously been produced to the Port. The embargo notice was attached as Exhibit 7 to CORP's Response to the Board's Show Cause Order in Docket No. 35130, and the Port's reply filing in that proceeding attached a press release announcing the embargo as Exhibit 25. CORP notes that shippers on the Line were also notified verbally of the embargo. CORP does not possess documents related to those verbal notifications.

Document Request No. 8 Please produce a list or roster of CORP employees for the years 2007, 2006, and 2005.

Response:

CORP specifically objects to this Request as irrelevant to the subject matter of this proceeding. Subject to and without waiving its objections, CORP will produce responsive documents in its possession, custody, or control subject to an appropriate protective order.

Document Request No. 9 Please produce all documents related to any complaints concerning CORP's rail service over the Line in the years 2007, 2006, or 2005.

Response:

CORP specifically objects to this Request as irrelevant to the subject matter of this proceeding. Subject to and without waiving its objections, CORP will produce responsive documents in its possession, custody, or control subject to an appropriate protective order.

Document Request No. 10 Please produce all documents related to the railway tunnels on the Line, including without limitation any documents relating to repairs, costs of repairs, structural stability, and safety of rail operations in tunnels.

Response:

CORP specifically objects to this request for "all documents . . . without limitation" as overbroad and unduly burdensome. CORP further objects to the lack of any time limitation on this Request. The Port's Request for documents that predate 2005 is particularly burdensome and unnecessary. CORP further objects to this Request as unduly burdensome to the extent it seeks information that (i) is contained in the CORP Abandonment Application; (ii) is publicly available; or (iii) is otherwise readily available to the Port. *See Duke Energy v. Norfolk So. Co.*, STB Docket Nos. 42069, 42070 (July 26, 2002) ("[I]t is unduly burdensome to require a party to produce information that is available from public records or through less intrusive means."). Subject to and without waiving its objections, CORP will produce responsive documents in its possession, custody, or control that have not previously been produced to the Port. CORP notes that its May 12, 2008 Response to the Board's Show Cause Order in Docket No. 35130 included the most current reports on the conditions of the tunnels on the Line, namely the 2007 reports by Shannon & Wilson and the Federal Railroad Administration attached as Exhibits 6 and 8 to that filing.

Document Request No. 11 Beginning with the year 2000, please produce all documents relating to abandonment and/or discontinuance of service over the Line.

Response:

CORP specifically objects to this Request as irrelevant to the subject matter of this proceeding. Subject to and without waiving its objections, CORP states that it has no responsive, nonprivileged documents in its possession, custody or control except the Abandonment Application and supporting workpapers.

Document Request No. 12 Please produce CORP's audited financial statements for the years 2007, 2006, and 2005.

Response:

CORP specifically objects to this Request as irrelevant to the subject matter of this proceeding as the Port has conceded that the Going-Concern Value (GCV) of the Line is zero or less. Subject to and without waiving its objections, CORP states that it does not prepare audited financial statements in the normal course of business.

Document Request No. 13 Please produce all agreements with UPRR or any other railroad regarding revenue divisions, trackage rights, haulage rights, or other rights on or relating to your operations on the Line.

Response:

CORP specifically objects to this Request as irrelevant to the subject matter of this proceeding. CORP further objects on the grounds that the Port already possesses CORP agreements with Union Pacific which were appended to CORP's Response to the Board's Show Cause Order. Subject to and without waiving its objections, CORP will produce responsive documents in its possession, custody, or control subject to an appropriate protective order.

Document Request No. 14 Please produce all documents related to car hire or other rail car charges paid by CORP in the last three years.

Response:

CORP specifically objects to this Request as irrelevant to the subject matter of this proceeding, overbroad, and unduly burdensome. Subject to and without waiving its objections, CORP will produce responsive documents in its possession, custody, or control subject to an appropriate protective order.

RESPONSE TO REQUEST FOR RIGHT TO ENTER UPON AND INSPECT LAND

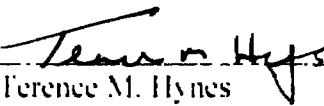
Request No. 1: Please grant a right of access to the Port and its counsel or consultants retained in connection with this proceeding to enter upon the Line and related CORP property for all lawful purposes related to this proceeding in STB Finance Docket No. 35160, including inspection, survey, measuring, testing, photographing and sampling. The Port will work with CORP to determine an appropriate time and manner for this inspection.

Response:

Subject to and without waiving its objections, CORP will permit the Port to inspect the Line subject to the following provisions: (1) that the agents of the Port performing said inspection be accompanied by an agent or agents of CORP at all times while on CORP property; (2) that the Port execute an appropriate liability waiver and indemnity agreement for potential liability for any accidents or incidents that may occur while the Port's representatives are on the Line or related CORP property; (3) that the Port provide evidence that it is insured for all activities on the Line during the inspection; (4) that the inspection does not damage the Line or the rail assets on the Line; and (5) that the time and manner of the inspection be reasonable and agreed-to by the parties in advance.

Respectfully Transmitted.

Scott G. Williams
Senior Vice President and
General Counsel
RailAmerica, Inc.
5300 Broken Sound Boulevard N.W.
Boca Raton, Florida 33487
(561) 994-6015

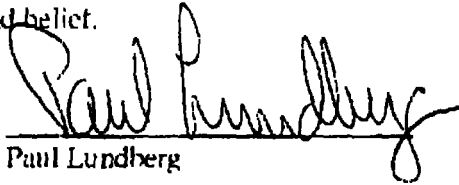

Terence M. Hynes
Paul A. Hemmersbaugh
Matthew J. Warren
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Central Oregon & Pacific Railroad, Inc

Dated: July 28, 2008

VERIFICATION

I, Paul Lundberg, being duly authorized by Central Oregon & Pacific Railroad, Inc ;
declare under penalty of perjury that the foregoing Responses to Interrogatories are true and
correct to the best of my knowledge, information and belief.


Paul Lundberg

Date: 7/28/08

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Responses And Objections to the Oregon International Port of Coos Bay's First Set of Interrogatories and Requests for the Production of Documents and Request to Enter Upon Land to be served by first class mail, postage prepaid, this 28th day of July 2008, on counsel for the International Port of Coos Bay:

Sandra L. Brown
Michael H. Higgins
David E. Benz
Troutman Sanders LLP
401 9th Street, NW
Suite 1000
Washington, DC 20004

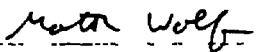

Matthew Wolfe

EXHIBIT 4

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

401 9TH STREET, N.W. • SUITE 1000
WASHINGTON, D.C. 20004-2134
www.troutmansanders.com
TELEPHONE: 202-274-2950

david.benz@troutmansanders.com

Direct Dial: 202-274-2809
Fax: 202-654-5608

August 1, 2008

Via E-Mail and U.S. First-Class Mail

Terence M. Hynes
Paul A. Hemmersbaugh
Sidley Austin LLP
1501 K St. NW
Washington, DC 20005
thynes@sidley.com
phemmersbaugh@sidley.com

Re: STB Finance Docket No. 35160, *Oregon International Port of Coos Bay – Feeder Line Application – Coos Bay Line of the Central Oregon & Pacific Railroad, Inc*

Dear Mr. Hynes and Mr. Hemmersbaugh:

On July 11, 2008, the Oregon International Port of Coos Bay ("Port") filed a feeder line application under 49 USC § 10907 in the above-captioned docket. On that same day, the Port also served discovery requests on the Central Oregon & Pacific Railroad ("CORP"), which included a request to enter upon and inspect land. CORP made a partial response to the discovery requests on July 28, 2008. Along with those responses, CORP agreed to allow the Port to inspect the Coos Bay rail line subject to certain conditions. The Port would like to move forward with the initial inspection of the track, bridges, and tunnels sometime between August 4 and August 8, 2008.

Preliminarily, we envision that three days will be needed to fully inspect the entire Line, and we suggest August 6-8 for this purpose. The actual time needed will depend on the condition of the Line and how accessible it is. Furthermore, due to the proliferation of bridges and tunnels on the Line, we expect that an additional inspection of the Line in the near future will probably be necessary to focus on these bridges and tunnels.

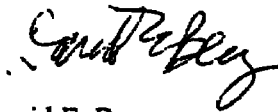
ATLANTA • HONG KONG • LONDON • NEW YORK • NEWARK • NORFOLK • RALEIGH
RICHMOND • SHANGHAI • TYSONS CORNER • VIRGINIA BEACH • WASHINGTON, D.C.

Terence M. Hynes
Paul A. Hemmersbaugh
August 1, 2008
Page 2

CORP has indicated that a CORP representative will accompany the Port on the inspection. Hence, we need to coordinate timing for the visit. I note that you would like the Port's inspectors to sign an "appropriate liability waiver and indemnity agreement." Please provide a draft of a liability waiver and indemnity agreement that we may review. Lastly, you have requested a proof of insurance, and we should have the appropriate documents for you shortly.

Feel free to contact me or Sandy Brown at your earliest convenience to discuss these important matters.

Sincerely,



David E. Benz
*Counsel for the Oregon International
Port of Coos Bay*

EXHIBIT 5

Brown, Sandra L.

From: Hynes, Terence M. [thynes@Sidley.com]
Sent: Monday, August 04, 2008 6:37 PM
To: Brown, Sandra L.
Subject: Form Of Release and Waiver for Inspection Trip

Sandy: Attached is a form of release and liability waiver agreement for the Port's requested inspection trip over the Coos Bay Line. If the agreement is satisfactory, please arrange to have it executed by your client, so that we may proceed with scheduling the inspection. If you have any questions regarding the agreement, please give me a cal.

Terry

<<1241880_4.DOC>>

Sidley Austin LLP mail server made the following annotations on 08/04/08, 17:38:22:

IRS Circular 230 Disclosure: To comply with certain U.S. Treasury regulations, we in that, unless expressly stated otherwise, any U.S. federal tax advice contained in th communication, including attachments, was not intended or written to be used, and ca used, by any taxpayer for the purpose of avoiding any penalties that may be imposed taxpayer by the Internal Revenue Service. In addition, if any such tax advice is us to by other parties in promoting, marketing or recommending any partnership or other investment plan or arrangement, then (i) the advice should be construed as written i with the promotion or marketing by others of the transaction(s) or matter(s) address communication and (ii) the taxpayer should seek advice based on the taxpayer's parti circumstances from an independent tax advisor.

This e-mail is sent by a law firm and may contain information that is privileged or If you are not the intended recipient, please delete the e-mail and any attachments immediately.

**Limited Right of Entry and Indemnification Agreement
Between the Oregon International Port of Coos Bay and the
Central Oregon & Pacific Railroad, Inc. For Inspection of the Coos Bay
Subdivision.**

This Limited Right of Entry and Indemnification Agreement ("Agreement") made and effective as of August ____, 2008, responds to the request of the Oregon International Port of Coos Bay's (the "Port") for access to the Coos Bay Subdivision of the Central Oregon & Pacific Railroad Company (the "Railroad") for the purpose of inspecting said Coos Bay Subdivision (the "Property") in connection with the Port's Feeder Line Application pending before the Surface Transportation Board in STB Docket No. 35160, *Oregon International Port of Coos Bay – Feeders Line Application – Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.* Subject to the Port's acceptance of, and compliance with, the terms and conditions set forth in this Agreement, Railroad will grant to the Port, its employees, agents, servants, and designated contractors or consultants (collectively, the "Licensee") limited and temporary permission to enter upon Railroad property for the purpose of inspecting the Property for purposes related to its pending Feeder Line Application.

1. **Definitions.** Terms used in this Agreement shall have the following definitions.
 - a. Railroad – Central Oregon and Pacific Railroad, Inc.
 - b. Licensee or Port – The Oregon International Port of Coos Bay, its employees, officers, agents, contractors, and consultants;
 - c. Property -- the Coos Bay Subdivision of the Central Oregon and Pacific Railway Company, between Milepost 763.13 (near Cordes, OR) and Milepost 652.11 (near Danebo, OR).
 - d. Inspection – a one-time physical inspection of the Property to be conducted by Licensee (or its agents), and limited to such physical inspection and review as is necessary to gather information Licensee needs for the STB proceeding concerning its Feeder Line Application.
 - e. Claims – Any and all claims, demands, actions at law and/or equity, assertions of liability, injury, damage, harm, losses or requests for payment or recovery of expenses of any character whatsoever, asserted by Licensee (including all of its agents and representatives) against Railroad (including without limitation any of its affiliates or their employees, officers, directors, agents or consultants.) concerning, arising from, or related to the Inspection on this Agreement.

2. Schedule, Duration and Scope.

a. This Agreement shall provide a limited right of entry to Licensee for the sole purpose of conducting the Inspection, beginning on the date that authorized representatives of both parties have executed the Agreement. That right of entry shall terminate when Licensee has had a reasonable opportunity to complete the Inspection, but in no event later than August 28, 2008. The Inspection shall last no longer than three (3) days.

b. Licensee or its agents or representatives may enter the Property for the Inspection only when accompanied by an employee or agent of the Railroad, and only at such times as are expressly authorized in advance by the Railroad. Licensee and Railroad shall cooperate to schedule the Inspection at a time that is mutually convenient for both parties.

c. Licensee is authorized only to traverse and inspect the Property. Licensee is not authorized to conduct any testing of soils, bridges, tunnels or track materials, or to engage in any other work or activity on the Property or any other property in which the Railroad has an interest.

3. Waiver. Licensee hereby acknowledges that its inspection of the Property may entail risk of personal injury or death. Licensee knowingly and voluntarily assumes all such risk (including, without limitation, risks due to the condition of tunnels, track, bridges, structures, and facilities on the Property; and risks posed by terrain, water bodies, falling trees, rocks and rock slides, and other physical features and occurrences). Licensee hereby waives any and all Claim(s) against Railroad for personal injury, death, damage to property or other harm incurred or allegedly incurred during (or as a result of) Licensee's presence on the Property.

4. Indemnity.

a. As an essential inducement to and consideration for Railroad granting it permission to undertake the Inspection, Licensee hereby assumes and releases, and shall indemnify, defend, protect and save Railroad and its Affiliates ("Affiliates" includes all entities, directly or indirectly, owned or controlled by or under common control of Railroad, and any of their respective officers, directors, employees and agents) harmless from and against all Claims, and all liabilities, demands, actions at law and equity, judgments, settlements, losses, damages and expenses of every character whatsoever (hereinafter collectively referred to as "Damages") for:

i. Loss of or damage to any real or personal property whatsoever and by whomsoever owned, including Railroad, Licensee and any other person, and the loss or interference with any use or service thereof;

ii. Injury to or death of any person whomsoever, including employees and invitees of the parties hereto and their agent(s) and contractor(s) and all other persons;

iii. Fines, penalties, costs, charges, expenses, or fees levied by any governmental agency against Railroad that arise as a result of the Inspection or related activity; and

iv. Costs and expenses incurred by Railroad with respect to (i), (ii), and (iii) above, including reasonable attorney and consultant fees, which are caused by or arise from the presence of Licensee, its agents, or its contractors on the Property of any other part of the Railroad's property; provided, however, the foregoing indemnification shall not extend to any loss, cost or damage arising from the gross negligence or intentional misconduct of Railroad.

b. The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law.

5. Insurance. Prior to Railroad's execution of this Agreement, Licensee shall provide proof of insurance coverage (including Commercial General Liability ("CGL") insurance,) in such amounts and under such terms, as are acceptable to Railroad. Licensee shall maintain said coverage during continuance of this Agreement. Licensee shall also cause any of its agents or contractors who participate in the Inspection to provide evidence of CGL insurance in a similar amount, naming Licensee (and its agent or contractor as the case may be) as insured and Railroad as additional insured, covering Licensee's direct and assumed contractual (i.e., indemnification) liability under this Agreement.

6. No Assignment; Modification, Survival.

a. This Agreement and the license granted herein shall not be assigned by Licensee without Railroad's separate written consent.

b. Except as otherwise provided herein, this Agreement may be modified or amended only in a separate writing executed by both Railroad and Licensee.

c. The provisions of Sections 3, 4, and 5 shall survive the expiration or any earlier termination of this Agreement.

If the provisions and terms of this Agreement are acceptable to Licensee, please have an authorized official of Licensee sign both copies in the space provided below, and return both duplicate originals to the undersigned, together with the proofs of insurance contemplated by Section 5, to Railroad. Your copy will be executed by the Railroad and returned.

Central Oregon & Pacific Railroad, Inc.

By: _____ Date

Its _____
Name, Title

Oregon International Port of Coos Bay

By: _____ Date

Who, by the execution hereof, affirms that he/she has authority to – and hereby does – bind the Licensee to the terms and conditions of this Agreement.

Its _____
Name, Title

EXHIBIT 6

Brown, Sandra L.

From: Brown, Sandra L.
Sent: Wednesday, August 06, 2008 6:35 PM
To: thynes@sidley.com
Subject: Right of Entry Agreement

Terry,

As we discussed, I am just awaiting final confirmation on the Port insurance part. In the interest of time, attached is our markup of the agreement and a copy of the RLBA insurance certificate. Please review and get back to me. Thanks.

Sandra Brown

Troutman Sanders LLP
401 Ninth Street, NW, Suite 1000
Washington, DC 20004
(202) 274-2959 - Direct line
(202) 841-0067 - Mobile
(202) 654-5603 - Direct fax
Firm web site: <http://www.troutmansanders.com>



CORP Right of Entry.DOC (29 KB...3-06-23 pm.pdf (13.

**Limited Right of Entry and Indemnification Agreement
Between the Oregon International Port of Coos Bay and the
Central Oregon & Pacific Railroad, Inc. For Inspection of the Coos Bay
Subdivision.**

This Limited Right of Entry and Indemnification Agreement ("Agreement") made and effective as of August ____, 2008, responds to the request of the Oregon International Port of Coos Bay's (the "Port") for access to the Coos Bay Subdivision of the Central Oregon & Pacific Railroad Company (the "Railroad") for the purpose of inspecting said Coos Bay Subdivision (the "Property") in connection with the Port's Feeder Line Application pending before the Surface Transportation Board in STB Docket No. 35160, *Oregon International Port of Coos Bay – Feeders Line Application – Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.* Subject to the Port's acceptance of, and compliance with, the terms and conditions set forth in this Agreement, Railroad will grant to the Port, its employees, agents, servants, and designated contractors or consultants (collectively, the "Licensee") limited and temporary permission to enter upon Railroad property for the purpose of inspecting the Property for purposes related to its pending Feeder Line Application.

1. **Definitions.** Terms used in this Agreement shall have the following definitions.
 - a. Railroad – Central Oregon and Pacific Railroad, Inc.
 - b. Licensee or Port – The Oregon International Port of Coos Bay, its employees, officers, agents, contractors, and consultants;
 - c. Property -- the Coos Bay Subdivision of the Central Oregon and Pacific Railway Company, between Milepost 763.13 (near Cordes, OR) and Milepost 652.11 (near Danebo, OR).
 - d. Inspection – a ~~one-time~~ physical inspection of the Property to be conducted by Licensee (or its agents), ~~and limited to such physical inspection and review under 49 CFR § 1114.30(a)(2)~~ as is necessary to gather information Licensee needs for the STB proceeding concerning its Feeder Line Application.
 - e. Claims – Any and all claims, demands, actions at law and/or equity, assertions of liability, injury, damage, harm, losses or requests for payment or recovery of expenses of any character whatsoever, asserted by Licensee (including all of its agents and representatives) against Railroad (including- without limitation any of its affiliates or their employees, officers, directors, agents or consultants.) concerning, arising from, or related to the Inspection on this Agreement.

2. Schedule, Duration and Scope.

a. This Agreement shall provide a limited right of entry to Licensee for the sole purpose of conducting the Inspection, beginning on the date that authorized representatives of both parties have executed the Agreement. That right of entry shall terminate when Licensee has had a reasonable opportunity to complete the Inspection, but in no event later than September 12~~August 28~~, 2008. ~~The Inspection shall last no longer than three (3) days.~~

b. Licensee or its agents or representatives may enter the Property for the Inspection only when accompanied by an employee or agent of the Railroad, and only at such times as are expressly authorized in advance by the Railroad. Licensee and Railroad shall cooperate to schedule the Inspection at a time that is mutually convenient for both parties.

c. Licensee is authorized ~~only to traverse and inspect the Property as set forth in 49 CFR § 1114.30(a)(2).~~ ~~Licensee is not authorized to conduct any testing of soils, bridges, tunnels or track materials, or to engage in any other work or activity on the Property or any other property in which the Railroad has an interest.~~

3. Waiver. Licensee hereby acknowledges that its ~~i~~Inspection of the Property may entail risk of personal injury or death. Licensee knowingly and voluntarily assumes all such risk (including, without limitation, risks due to the condition of tunnels, track, bridges, structures, and facilities on the Property; and risks posed by terrain, water bodies, falling trees, rocks and rock slides, and other physical features and occurrences). Licensee hereby waives any and all Claim(s) against Railroad for personal injury, death, damage to property or other harm incurred or allegedly incurred during (or as a result of) Licensee's presence on the Property during the Inspection.

4. Indemnity.

a. As an essential inducement to and consideration for Railroad granting it permission to undertake the Inspection, to the extent not prohibited by applicable statute, Licensee hereby assumes and releases, and shall indemnify, defend, protect and save Railroad and its Affiliates ("Affiliates" includes all entities, directly or indirectly, owned or controlled by or under common control of Railroad, and any of their respective officers, directors, employees and agents) harmless from and against all Claims, and all liabilities, demands, actions at law and equity, judgments, settlements, losses, damages and expenses of every character whatsoever (hereinafter collectively referred to as "Damages") that arise from the Inspection and are for:

i. Loss of or damage to any real or personal property whatsoever and by whomsoever owned, including Railroad, Licensee and any other person, ~~and the loss or interference with any use or service thereof;~~

ii. Injury to or death of any person whomsoever, including employees and invitees of the parties hereto and their agent(s) and contractor(s) and all other persons;

iii. Fines, penalties, costs, charges, expenses, or fees levied by any governmental agency against Railroad that arise as a result of the Inspection or related activity; and

iv. Costs and expenses incurred by Railroad with respect to (i), (ii), and (iii) above, including reasonable attorney and consultant fees, which are caused by or arise from the presence of Licensee, its agents, or its contractors on the Property of any other part of the Railroad's property; provided, however, the foregoing indemnification shall not extend to any loss, cost or damage arising from the gross negligence or intentional misconduct of Railroad.

b. The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law.

5. Insurance. Prior to Railroad's execution of this Agreement, Licensee shall provide proof of insurance coverage (including Commercial General Liability ("CGL") insurance,) in such amounts and under such terms, as are acceptable to Railroad. Licensee shall maintain said coverage during continuance of this Agreement. Licensee shall also cause any of its agents or contractors who participate in the Inspection to provide evidence of CGL insurance in a similar amount, naming Licensee (and its agent or contractor as the case may be) as insured and Railroad as additional insured, covering Licensee's direct and assumed contractual (i.e., indemnification) liability under this Agreement.

6. No Assignment; Modification, Survival.

a. This Agreement and the license granted herein shall not be assigned by Licensee without Railroad's separate written consent.

b. Except as otherwise provided herein, this Agreement may be modified or amended only in a separate writing executed by both Railroad and Licensee.

c. The provisions of Sections 3, 4, and 5 shall survive the expiration or any earlier termination of this Agreement.

If the provisions and terms of this Agreement are acceptable to Licensee, please have an authorized official of Licensee sign both copies in the space provided below, and return both duplicate originals to the undersigned, together with the proofs of insurance contemplated by Section 5, to Railroad. Your copy will be executed by the Railroad and returned.

Central Oregon & Pacific Railroad, Inc.

By: _____

Date

Its _____
Name, Title

Oregon International Port of Coos Bay

By: _____

Date

Who, by the execution hereof, affirms that he/she has authority to – and hereby does – bind the Licensee to the terms and conditions of this Agreement.

Its _____
Name, Title

EXHIBIT 7

Brown, Sandra L.

From: Hynes, Terence M. [thynes@Sidley.com]
Sent: Friday, August 08, 2008 1:15 PM
To: Brown, Sandra L.; Benz, David E.
Subject: Coos Bay Line Inspection

Sandy: Per the Port of Coos Bay's discovery request, we have arranged for the Port's representatives to inspect the Coos Bay Line on Wednesday - Friday next week (August 13-15). Slim Mattox and one other CORP employee will escort the Port's inspection party (which, David advised, will consist of 2 or 3 persons). We have arranged a hi-rail vehicle for the inspection -- however, as I have mentioned to you previously, it will not be possible to conduct a continuous hi-rail trip from end-to-end, due to downed trees at certain points along the line, and the fact that tunnel portals have been fenced over for safety reasons during the embargo. (Mr. Mattox will be accompanied by a CORP employee who is more familiar with the local roads, in order to facilitate necessary transfers from rail to pavement.)

As discussed in our response to your request for an inspection, each member of the Port's inspection party must execute the waiver and release form that we provided to you, prior to going on the property. In addition, in order to comply with the railroad's safety procedures, each member of the inspection party must bring their own safety gear, including hard hat, sturdy boots and protective eyewear.

Mr. Mattox will meet your party at CORP's Eugene offices, 431 Bethel Drive, Eugene, OR at 8:00 am on August 13th. Should you need to contact him, his cell phone number is 541-840-3148.

Terry

Sidley Austin LLP mail server made the following annotations on 08/08/08, 12:14:52:

IRS Circular 230 Disclosure: To comply with certain U.S. Treasury regulations, we in that, unless expressly stated otherwise, any U.S. federal tax advice contained in th communication, including attachments, was not intended or written to be used, and ca used, by any taxpayer for the purpose of avoiding any penalties that may be imposed taxpayer by the Internal Revenue Service. In addition, if any such tax advice is us to by other parties in promoting, marketing or recommending any partnership or other investment plan or arrangement, then (i) the advice should be construed as written i with the promotion or marketing by others of the transaction(s) or matter(s) address communication and (ii) the taxpayer should seek advice based on the taxpayer's parti circumstances from an independent tax advisor.

This e-mail is sent by a law firm and may contain information that is privileged or If you are not the intended recipient, please delete the e-mail and any attachments immediately.

EXHIBIT 8

Brown, Sandra L.

From: Brown, Sandra L.
Sent: Monday, August 11, 2008 3:54 PM
To: thynes@sidley.com
Cc: Benz, David E.
Subject: CORP Right of Entry 08_11_2008.DOC

Terry,

Here is the Right of Entry agreement based upon our conversation today.



CORP Right of
Entry 08_11_2008...

Sandra Brown

Troutman Sanders LLP
401 Ninth Street, NW, Suite 1000
Washington, DC 20004
(202) 274-2959 - Direct line
(202) 841-0067 - Mobile
(202) 654-5603 - Direct fax

Firm web site: <http://www.troutmansanders.com>

**Limited Right of Entry and Indemnification Agreement
Between the Oregon International Port of Coos Bay and the
Central Oregon & Pacific Railroad, Inc. For Inspection of the Coos Bay
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1. **Definitions.** Terms used in this Agreement shall have the following definitions.
 - a. Railroad – Central Oregon and Pacific Railroad, Inc.
 - b. Licensee or Port – The Oregon International Port of Coos Bay, its employees, officers, agents, contractors, and consultants;
 - c. Property -- the Coos Bay Subdivision of the Central Oregon and Pacific Railway Company, between Milepost 763.13 (near Cordes, OR) and Milepost 652.11 (near Danebo, OR).
 - d. Inspection – a physical inspection of the Property to be conducted by Licensee (or its agents) under 49 CFR § 1114.30(a)(2) as is necessary to gather information Licensee needs for the STB proceeding concerning its Feeder Line Application.
 - e. Claims – Any and all claims, demands, actions at law and/or equity, assertions of liability, injury, damage, harm, losses or requests for payment or recovery of expenses of any character whatsoever, asserted by Licensee (including all of its agents and representatives) against Railroad (including without limitation any of its affiliates or their employees, officers, directors, agents or consultants.) concerning, arising from, or related to the Inspection on this Agreement.

2. Schedule, Duration and Scope.

a. This Agreement shall provide a limited right of entry to Licensee for the sole purpose of conducting the Inspection, beginning on the date that authorized representatives of both parties have executed the Agreement. That right of entry shall terminate when Licensee has had a reasonable opportunity to complete the Inspection, but in no event later than September 12, 2008.

b. Licensee or its agents or representatives may enter the Property for the Inspection only when accompanied by an employee or agent of the Railroad, and only at such times as are expressly authorized in advance by the Railroad. Licensee and Railroad shall cooperate to schedule the Inspection at a time that is mutually convenient for both parties.

c. Licensee is authorized to traverse and inspect the Property as set forth in 49 CFR § 1114.30(a)(2).

3. Waiver. Licensee hereby acknowledges that its Inspection of the Property may entail risk of personal injury or death. Licensee knowingly and voluntarily assumes all such risk (including, without limitation, risks due to the condition of tunnels, track, bridges, structures, and facilities on the Property; and risks posed by terrain, water bodies, falling trees, rocks and rock slides, and other physical features and occurrences). Licensee hereby waives any and all Claim(s) against Railroad for personal injury, death, damage to property or other harm incurred or allegedly incurred during (or as a result of) Licensee's presence on the Property during the Inspection.

4. Indemnity.

a. As an essential inducement to and consideration for Railroad granting it permission to undertake the Inspection, Licensee hereby assumes and releases, and shall indemnify, defend, protect and save Railroad and its Affiliates ("Affiliates" includes all entities, directly or indirectly, owned or controlled by or under common control of Railroad, and any of their respective officers, directors, employees and agents) harmless from and against all Claims, and all liabilities, demands, actions at law and equity, judgments, settlements, losses, damages and expenses of every character whatsoever (hereinafter collectively referred to as "Damages") that arise from the Inspection and are for:

i. Loss of or damage to any real or personal property whatsoever and by whomsoever owned, including Railroad, Licensee and any other person;

ii. Injury to or death of any person whomsoever, including employees and invitees of the parties hereto and their agent(s) and contractor(s) and all other persons;

iii. Fines, penalties, costs, charges, expenses, or fees levied by any governmental agency against Railroad that arise as a result of the Inspection or related activity; and

iv. Costs and expenses incurred by Railroad with respect to (i), (ii), and (iii) above, including reasonable attorney and consultant fees, which are caused by or arise from the presence of Licensee, its agents, or its contractors on the Property of any other part of the Railroad's property; provided, however, the foregoing indemnification shall not extend to any loss, cost or damage arising from the negligence or intentional misconduct of Railroad.

b. The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law.

5. Insurance. Prior to Railroad's execution of this Agreement, Licensee shall provide proof of insurance coverage (including Commercial General Liability ("CGL") insurance,) in such amounts and under such terms, as are acceptable to Railroad. Licensee shall maintain said coverage during continuance of this Agreement. Licensee shall also cause any of its agents or contractors who participate in the Inspection to provide evidence of CGL insurance in a similar amount, naming Licensee (and its agent or contractor as the case may be) as insured and Railroad as additional insured, covering Licensee's direct and assumed contractual (i.e., indemnification) liability under this Agreement.

6. No Assignment; Modification, Survival.

a. This Agreement and the license granted herein shall not be assigned by Licensee without Railroad's separate written consent.

b. Except as otherwise provided herein, this Agreement may be modified or amended only in a separate writing executed by both Railroad and Licensee.

c. The provisions of Sections 3, 4, and 5 shall survive the expiration or any earlier termination of this Agreement.

If the provisions and terms of this Agreement are acceptable to Licensee, please have an authorized official of Licensee sign both copies in the space provided below, and return both duplicate originals to the undersigned, together with the proofs of insurance contemplated by Section 5, to Railroad. Your copy will be executed by the Railroad and returned.

Central Oregon & Pacific Railroad, Inc.

By: _____ Date _____
Its _____
Name, Title

Oregon International Port of Coos Bay

By: _____ Date _____
Who, by the execution hereof, affirms that he/she
has authority to – and hereby does – bind the
Licensee to the terms and conditions of this
Agreement.

Its _____
Name, Title

EXHIBIT 9

Brown, Sandra L.

From: Hynes, Terence M. [thynes@Sidley.com]
Sent: Monday, August 11, 2008 5:47 PM
To: Brown, Sandra L.
Subject: RE: CORP Right of Entry 08_11_2008.DOC

Looks OK, Sandy. You indicated that the members of your inspection party would bring signed copies with them on Wednesday. Could you please also arrange to have copies sent to me (via fax or email)?

Thanks, Terry

From: Brown, Sandra L. [mailto:Sandy.Brown@troutmansanders.com]
Sent: Monday, August 11, 2008 3:54 PM
To: Hynes, Terence M.
Cc: Benz, David E.
Subject: CORP Right of Entry 08_11_2008.DOC

Terry,

Here is the Right of Entry agreement based upon our conversation today.

<<CORP Right of Entry 08_11_2008.DOC>>

Sandra Brown
Troutman Sanders LLP
401 Ninth Street, NW, Suite 1000
Washington, DC 20004
(202) 274-2959 - Direct line
(202) 841-0067 - Mobile
(202) 654-5603 - Direct fax
Firm web site: <http://www.troutmansanders.com>

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Sidley Austin LLP mail server made the following annotations on 08/11/08, 16:46:37:

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EXHIBIT 10

Brown, Sandra L.

From: Brown, Sandra L.
Sent: Tuesday, August 12, 2008 5:14 PM
To: thynes@sidley.com
Subject: FW: Waiver Signature Page

Terry,

Here is the signature page for Gene Davis and the Port's certificate insurance naming CORP (even though I don't think the agreement asks for this). I will have Martin and Jeff's signature pages later this evening. Jeff will probably only attend one day.

Sandra Brown
Troutman Sanders LLP
401 Ninth Street, NW, Suite 1000
Washington, DC 20004
(202) 274-2959 - Direct line
(202) 841-0067 - Mobile
(202) 654-5603 - Direct fax
Firm web site: <http://www.troutmansanders.com>

8/29/2008

If the provisions and terms of this Agreement are acceptable to Licensee, please have an authorized official of Licensee sign both copies in the space provided below, and return both duplicate originals to the undersigned, together with the proofs of insurance contemplated by Section 5, to Railroad. Your copy will be executed by the Railroad and returned.

Central Oregon & Pacific Railroad, Inc.

By: _____ Date _____
Its _____
Name, Title

Oregon International Port of Coos Bay

By: Gene A. Davis 8/12/08
Date

Who, by the execution hereof, affirms that he/she has authority to – and hereby does – bind the Licensee to the terms and conditions of this Agreement.

Its Gene A. Davis 8/12/08
Name, Title
R.L. Banks & Associates, Inc.
Director, Transportation Engineering

ACORD. CERTIFICATE OF LIABILITY INSURANCEOP ID DF
INTER-2DATE (MM/DD/YYYY)
08/11/08**PRODUCER**

NASBURG AND COMPANY
375 SOUTH FOURTH STREET
COOS BAY OR 97420
Phone: 541-267-3165 Fax: 541-267-5296

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Oregon International Port
of Coos Bay
P O Box 1215
Coos Bay OR 97420

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: Special Districts Assoc of OR

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING
ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR
MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH
POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURANCE LTYR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC	23P16351-259	01/01/08	01/01/09	EACH OCCURRENCE \$ 500,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ None PRODUCTS - COMP/OP AGG \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	23P16351-259	01/01/08	01/01/09	COMBINED SINGLE LIMIT (Ea accident) \$ 500,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A X	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	23P16351-259	01/01/08	01/01/09	EACH OCCURRENCE \$ 4,500,000 AGGREGATE \$ None EPL Occur \$ 4,500,000 EPL Aggr \$ 5,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				WC STATU- TORY LIMITS OTH- ER E L EACH ACCIDENT \$ E L DISEASE - EA EMPLOYEE \$ E L DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Coverage for the operations of the named insured as provided in the above
listed policy. Central Oregon & Pacific Railroad is named as additional
insured re: inspection of RR by Port employees Martin Callery and Jeffrey
Bishop.

CERTIFICATE HOLDER

CENTR04

Central Oregon & Pacific
Railroad
333 SE Mosher
Roseburg OR 97470

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION
DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN
NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL
IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR
REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Assigned to *John W. Thayer*

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Brown, Sandra L.

From: Brown, Sandra L.
Sent: Tuesday, August 12, 2008 7:19 PM
To: thynes@sidley.com
Subject: FW: Limited Right of Entry & Indemnification Agreement Pages

Terry,

This should be the final documents for the inspection tomorrow. Jeff's signature page is included but he will not be attending the site visit tomorrow.

Sandra Brown

Troutman Sanders LLP
401 Ninth Street, NW, Suite 1000
Washington, DC 20004
(202) 274-2959 - Direct line
(202) 841-0067 - Mobile
(202) 654-5603 - Direct fax
Firm web site: <http://www.troutmansanders.com>

DRAFT: August 4, 2008

**Limited Right of Entry and Indemnification Agreement
Between the Oregon International Port of Coos Bay and the
Central Oregon & Pacific Railroad, Inc. For Inspection of the Coos Bay
Subdivision.**

This Limited Right of Entry and Indemnification Agreement ("Agreement") made and effective as of August ____, 2008, responds to the request of the Oregon International Port of Coos Bay's (the "Port") for access to the Coos Bay Subdivision of the Central Oregon & Pacific Railroad Company (the "Railroad") for the purpose of inspecting said Coos Bay Subdivision (the "Property") in connection with the Port's Feeder Line Application pending before the Surface Transportation Board in STB Docket No. 35160, *Oregon International Port of Coos Bay – Feeders Line Application – Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.* Subject to the Port's acceptance of, and compliance with, the terms and conditions set forth in this Agreement, Railroad will grant to the Port, its employees, agents, servants, and designated contractors or consultants (collectively, the "Licensee") limited and temporary permission to enter upon Railroad property for the purpose of inspecting the Property for purposes related to its pending Feeder Line Application.

1. **Definitions.** Terms used in this Agreement shall have the following definitions.
 - a. Railroad – Central Oregon and Pacific Railroad, Inc.
 - b. Licensee or Port – The Oregon International Port of Coos Bay, its employees, officers, agents, contractors, and consultants;
 - c. Property -- the Coos Bay Subdivision of the Central Oregon and Pacific Railway Company, between Milepost 763.13 (near Cordes, OR) and Milepost 652.11 (near Danebo, OR).
 - d. Inspection – a physical inspection of the Property to be conducted by Licensee (or its agents) under 49 CFR § 1114.30(a)(2) as is necessary to gather information Licensee needs for the STB proceeding concerning its Feeder Line Application.
 - e. Claims – Any and all claims, demands, actions at law and/or equity, assertions of liability, injury, damage, harm, losses or requests for payment or recovery of expenses of any character whatsoever, asserted by Licensee (including all of its agents and representatives) against Railroad (including without limitation any of its affiliates or their employees, officers, directors, agents or consultants.) concerning, arising from, or related to the Inspection on this Agreement.

2. Schedule, Duration and Scope.

a. This Agreement shall provide a limited right of entry to Licensee for the sole purpose of conducting the Inspection, beginning on the date that authorized representatives of both parties have executed the Agreement. That right of entry shall terminate when Licensee has had a reasonable opportunity to complete the Inspection, but in no event later than September 12, 2008.

b. Licensee or its agents or representatives may enter the Property for the Inspection only when accompanied by an employee or agent of the Railroad, and only at such times as are expressly authorized in advance by the Railroad. Licensee and Railroad shall cooperate to schedule the Inspection at a time that is mutually convenient for both parties.

c. Licensee is authorized to traverse and inspect the Property as set forth in 49 CFR § 1114.30(a)(2).

3. Waiver. Licensee hereby acknowledges that its Inspection of the Property may entail risk of personal injury or death. Licensee knowingly and voluntarily assumes all such risk (including, without limitation, risks due to the condition of tunnels, track, bridges, structures, and facilities on the Property; and risks posed by terrain, water bodies, falling trees, rocks and rock slides, and other physical features and occurrences). Licensee hereby waives any and all Claim(s) against Railroad for personal injury, death, damage to property or other harm incurred or allegedly incurred during (or as a result of) Licensee's presence on the Property during the Inspection.

4. Indemnity.

a. As an essential inducement to and consideration for Railroad granting it permission to undertake the Inspection, Licensee hereby assumes and releases, and shall indemnify, defend, protect and save Railroad and its Affiliates ("Affiliates" includes all entities, directly or indirectly, owned or controlled by or under common control of Railroad, and any of their respective officers, directors, employees and agents) harmless from and against all Claims, and all liabilities, demands, actions at law and equity, judgments, settlements, losses, damages and expenses of every character whatsoever (hereinafter collectively referred to as "Damages") that arise from the Inspection and are for:

i. Loss of or damage to any real or personal property whatsoever and by whomsoever owned, including Railroad, Licensee and any other person;

ii. Injury to or death of any person whomsoever, including employees and invitees of the parties hereto and their agent(s) and contractor(s) and all other persons;

iii. Fines, penalties, costs, charges, expenses, or fees levied by any governmental agency against Railroad that arise as a result of the Inspection or related activity; and

iv. Costs and expenses incurred by Railroad with respect to (i), (ii), and (iii) above, including reasonable attorney and consultant fees, which are caused by or arise from the presence of Licensee, its agents, or its contractors on the Property of any other part of the Railroad's property; provided, however, the foregoing indemnification shall not extend to any loss, cost or damage arising from the negligence or intentional misconduct of Railroad.

b. The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law.

5. Insurance. Prior to Railroad's execution of this Agreement, Licensee shall provide proof of insurance coverage (including Commercial General Liability ("CGL") insurance,) in such amounts and under such terms, as are acceptable to Railroad. Licensee shall maintain said coverage during continuance of this Agreement. Licensee shall also cause any of its agents or contractors who participate in the Inspection to provide evidence of CGL insurance in a similar amount, naming Licensee (and its agent or contractor as the case may be) as insured and Railroad as additional insured, covering Licensee's direct and assumed contractual (i.e., indemnification) liability under this Agreement.

6. No Assignment; Modification; Survival.

a. This Agreement and the license granted herein shall not be assigned by Licensee without Railroad's separate written consent.

b. Except as otherwise provided herein, this Agreement may be modified or amended only in a separate writing executed by both Railroad and Licensee.

c. The provisions of Sections 3, 4, and 5 shall survive the expiration or any earlier termination of this Agreement.

If the provisions and terms of this Agreement are acceptable to Licensee, please have an authorized official of Licensee sign both copies in the space provided below, and return both duplicate originals to the undersigned, together with the proofs of insurance contemplated by Section 5, to Railroad. Your copy will be executed by the Railroad and returned.

Central Oregon & Pacific Railroad, Inc.

By: _____ Date

Its _____
Name, Title

Oregon International Port of Coos Bay

By: *Martin Gallery* *08-12-08*
Date

Who, by the execution hereof, affirms that he/she has authority to – and hereby does – bind the Licensee to the terms and conditions of this Agreement.

Its *Martin Gallery, Director of Communications + Freight*
Name, Title *Mobility*

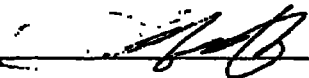
If the provisions and terms of this Agreement are acceptable to Licensee, please have an authorized official of Licensee sign both copies in the space provided below, and return both duplicate originals to the undersigned, together with the proofs of insurance contemplated by Section 5, to Railroad. Your copy will be executed by the Railroad and returned.

Central Oregon & Pacific Railroad, Inc.

By: _____ Date

Its _____
Name, Title

Oregon International Port of Coos Bay

By:  8/12/08
Date

Who, by the execution hereof, affirms that he/she has authority to – and hereby does – bind the Licensee to the terms and conditions of this Agreement.

Its Jeffrey Bishop, Executive Director
Name, Title

EXHIBIT 11

— TROUTMAN SANDERS LLP —

A T T O R N E Y S A T L A W
A LIMITED LIABILITY PARTNERSHIP

401 9TH STREET, N.W. - SUITE 1000
WASHINGTON, D.C. 20004-2134
www.troutmansanders.com
TELEPHONE 202-274-2050

david.benz@troutmansanders.com

Direct Dial: 202-274-2809
Fax: 202-654-5608

August 22, 2008

Via E-Mail and U.S. First-Class Mail

Terence M. Hynes
Paul A. Hemmersbaugh
Sidley Austin LLP
1501 K St. NW
Washington, DC 20005
thynes@sidley.com
phemmersbaugh@sidley.com

Re: **STB Finance Docket No. 35160, Oregon International Port of Coos Bay – Feeder
Line Application – Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.**

Dear Messrs. Hynes and Hemmersbaugh:

The Oregon International Port of Coos Bay ("Port") would like to schedule additional inspection of the Coos Bay rail line ("Line") covered in the feeder line application in STB Docket 35160. This inspection would occur pursuant to the Port's discovery requests dated July 11, 2008, the discovery response of the Central Oregon & Pacific Railroad ("CORP") dated July 28, 2008, and the parties' inspection agreement (*i.e.*, the "Limited Right of Entry and Indemnification Agreement Between the Oregon International Port of Coos Bay and the Central Oregon & Pacific Railroad, Inc. for Inspection of the Coos Bay Subdivision").

This inspection is particularly necessary in light of the Board's public hearing yesterday in which the Board stated that any new acquiror must perform due diligence and know the condition of a rail line when acquired. The Port has rail industry tunnel and bridge experts ready to assess the current condition of the tunnels and bridges on the Line. The level of rehabilitation and on-going maintenance needed on the tunnels and bridges is a critical factor in determining the economic feasibility of future rail operations on the Line. Hence, this inspection request is crucial to the Board's and the Port's decision-making process.

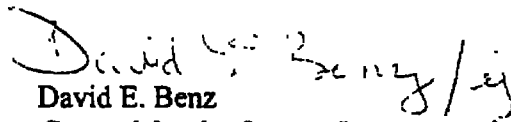
Given the rapidly approaching deadline of September 12th for the Port's reply evidence in this case, it is imperative that the inspection happen as soon as possible. After consultation with its bridge and tunnel experts, the Port requests that the inspection begin on the first available date that can be arranged by CORP, but in any event the inspection cannot start later

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RALEIGH RICHMOND • SHANGHAI • TYSONS CORNER • VIRGINIA BEACH •
WASHINGTON, D.C.

Terence M. Hynes
Paul A. Hemmersbaugh
August 22, 2008
Page 2

than August 27, 2008. Our experts advise us that the inspection would take 3-5 days. Please advise us by 12 noon eastern time on August 26 whether CORP will comply with this request.

Sincerely,


David E. Benz
*Counsel for the Oregon International
Port of Coos Bay*

ATLANTA • HONG KONG • LONDON • NEW YORK • NEWARK • NORFOLK •
RALEIGH RICHMOND • SHANGHAI • TYSONS CORNER • VIRGINIA BEACH •
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EXHIBIT 12

Brown, Sandra L.

From: Teehan, Anne A. [ATeehan@Sidley.com]
Sent: Friday, August 29, 2008 12:14 AM
To: Brown, Sandra L.; Benz, David E.; Higgins, Michael H.
Subject: On behalf of Terence M. Hynes: Emailing: Letter to David Benz.pdf



Letter to David
Benz.pdf (93 K...

<<Letter to David Benz.pdf>>

Attached is a letter from Terence Hynes to David Benz.

Anne Teehan
Assistant to Terence M. Hynes
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
Tel: 202-736-8199
Fax: 202-736-8711
ateehan@sidley.com

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SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
(202) 738 8000
(202) 738 8711 FAX

thynes@sidley.com
(202) 738-8198

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SHANGHAI
SINGAPORE
SYDNEY
TOKYO
WASHINGTON, D.C.

FOUNDED 1866

August 28, 2008

By Email

Mr. David Benz
Troutman Sanders LLP
401 9th Street, N.W. Ste. 1000
Washington, D.C. 20004

Re: Port of Coos Bay - Feeder Line Application, STB Finance Docket No. 35160

Dear David:

This letter responds to your August 22, 2008 letter requesting an "additional inspection" of the Central Oregon & Pacific Railroad ("CORP") line ("Line") that is the subject of the above-referenced Feeder Line Application filed by the Oregon International Port of Coos Bay ("Port"). As I advised Sandy Brown yesterday, CORP will not agree to provide the Port another escorted inspection, which is unduly burdensome and completely unwarranted.

The Port has now inspected the Line at least twice. The Port found its first "physical inspection" sufficient to enable it to prepare its Feeder Line Application. See Application at 95-96. CORP did not object to the Port's request for an additional inspection of the Line, and CORP provided personnel and a hirail vehicle to escort the Port's experts on a three-day inspection of the Line on August 13 - 15, 2008. During a telephone conversation on August 18, Sandy Brown advised me that CORP's personnel had been "helpful" and "cooperative" and that the Port's inspection party was able to cover the entirety of the subject lines during the inspection. I understand that members of the Port's inspection party conveyed similar sentiments to CORP personnel following completion of the inspection.

Given these facts, there is no justification for the Port to demand yet another inspection, which your letter suggests could take an additional "3-5 days." The Port has had ample opportunity to inspect the Line, and it would be unduly burdensome to require CORP personnel to devote more time to escorting the Port's personnel on a third inspection.

Your letter does not articulate any valid basis for a third inspection. In your letter, you state that "[t]he Port has rail industry tunnel and bridge experts ready to assess the current condition of the tunnels and bridges on the Line." However, you do not explain why those experts could not have participated in the inspection that the Port conducted just two weeks ago.

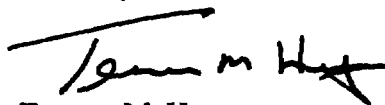
David Benz
August 28, 2008
Page 2

It cannot be news to the Port that the feeder line statute requires it to assume responsibility for rehabilitating the Line. If the Port thought that it needed to examine the bridges and tunnels on the Line more carefully in order to evaluate the cost of such rehabilitation, it should have done so during its prior inspections. (Indeed, at the request of Sandy Brown, I agreed to amend the agreement relating to Port access to inspect the Line to permit the prior inspection to continue for more than 3 days. Thus, the Port could have extended the August 13-15 inspection if it had deemed it necessary to do so.) To require CORP to make a hirail vehicle and personnel to escort the Port on yet another trip over the line at this late date would be unduly burdensome.

Finally, your suggestion that the Port requires a further inspection of the Line in order to prepare its Reply Evidence is incorrect. As you know, the primary contested issue in this Feeder Line proceeding is the net liquidation value ("NLV") of the Line. The current condition of bridges and tunnels on the Line is irrelevant to the NLV issue.

Simply put, there is no valid reason for the Port to demand yet another escorted multi-day inspection of the Line, particularly in light of the accelerated timetable governing this proceeding.

Sincerely,



Terence M. Hynes

cc: Sandra Brown (via email)
Michael Higgins (via email)